

APPROVED MINUTES
CITY OF MILPITAS

Minutes:	Regular Meeting of Milpitas City Council (including Joint Meeting with Milpitas Redevelopment Agency)
Date of Meeting:	December 21, 2004
Time of Meeting:	6:00 p.m. (Closed Session) 7:00 p.m. (Public Business)
Place of Meeting:	City Hall Council Chambers, 455 E. Calaveras Blvd.

CALL TO ORDER/ROLL

Mayor Esteves called to order regular meeting of the Milpitas City Council at 6:00 p.m. Present were Mayor Esteves, Vice Mayor Gomez, and Councilmembers Giordano and Livengood. Councilmember Polanski was absent.

CLOSED SESSION

Mayor Esteves reported the Council would convene in Closed Session to discuss the following item listed on the agenda:

Public Employee Performance Evaluation/Appointment/Dismissal/Release
(Pursuant to Government Code Section 54957)
Title: City Manager

**CLOSED SESSION
ANNOUNCEMENTS**

City Attorney Steve Mattas announced that by a 3 to 1 vote, with Mayor Esteves voting no, the Council accepted the resignation of City Manager Thomas Wilson, agreed to honor the contract provisions with Mr. Wilson's contract, and by a 3 to 1 vote, with Mayor Esteves voting no, appointed Police Chief Lawson as the interim City Manager effective December 22, 2004.

PLEDGE

Mayor Esteves led the Council and audience in the Pledge of Allegiance.

MINUTES

MOTION to approve the minutes of the Special City Council meeting on December 7, 2004, and the regular City Council minutes of December 7, 2004, including joint meeting with the Redevelopment Agency, as presented.

M/S: Gomez, Livengood. Ayes: 4 Absent: 1 (Polanski)

SCHEDULE

MOTION to approve the schedule of meetings as presented.

M/S: Gomez, Livengood. Ayes: 4 Absent: 1 (Polanski)

PRESENTATIONS

Mayor Esteves presented a Commendation to Paul T. Gish for his achieving the rank of Eagle Scout. Paul talked about scouting and thanked the Mayor for supporting the scouting program. Mayor Esteves commented that the success of an Eagle Scout was accompanied by the support of the parents and asked Paul's parents to stand and be recognized.

CITIZENS FORUM

Mayor Esteves invited members of the audience to address the Council on any subject not on the agenda, requesting that remarks be limited to two minutes or less and noted that the Clerk would be using the timer to indicate when two minutes were up.

Rob Means, Milpitas, spoke about the resignation of City Manager Wilson commenting that part of the Code of Ethics for the City included the accountability value that talked about explaining the actions and decisions of Councilmembers. Mr. Means asked what was so bad about Tom Wilson that he had to be terminated early; he knew police and fire had some complaints about him but they were never specific; and inquired how much it will cost the City.

ANNOUNCEMENTS

Mayor Esteves commented that sharing information on activities Councilmembers had attended or participated with was part of open government.

City Attorney Mattas cautioned the Council that issues related to Mr. Wilson were personnel matters and advised the Council not to engage in further discussion about them.

Mayor Esteves congratulated Wells Fargo Bank on the opening of a branch at McCarthy Ranch and thanked them for coming to Milpitas; congratulated the Vietnamese Radio Station on its 10th anniversary; said he attended the U.S. Army Volunteer Reserve Program ceremony, attended part of the opening of the Kung Fu School in Milpitas, and attended a Service Club dinner sponsored by the Kiwanis Club where he had the pleasure of joining members of the different service groups in Milpitas. Mayor Esteves reminded the Council that he had distributed the list of commissions and had requested Councilmembers inform him of their preferred assignments so that he could honor them.

CONFLICTS OF INTERESTS City Attorney Steve Mattas asked the members of the Council to identify any potential conflicts of interest with any of the items on the agenda. Mr. Mattas said that item 5 on the agenda (a request from the Mayor) involved two separate entities and in prior discussions he had with Councilmember Giordano, he suggested she may wish to abstain and before the matter came back to the Council, she would be advised as to whether or not she would have to abstain on the actual action item. Mr. Mattas advised that the Food Pantry item could be taken as one issue and the Chamber as another issue. Mayor Esteves agreed to split the item into two issues. City Attorney Mattas inquired if there were any other potential conflicts. There were none disclosed

MOMENTS OF REFLECTION There were none.

AGENDA MOTION to approve the agenda as submitted.

M/S: Livengood, Giordano. Ayes: 4 Absent: 1 (Polanski)

CONSENT CALENDAR Mayor Esteves inquired if anyone wished to remove any items from the Consent Calendar.

Councilmember Livengood stated in light of being so close to the holidays, there were a couple of items he needed more time to look at and requested item 9 (Ethics Awareness Survey) and item 10 (Lobbying Ordinance) be added to the Consent Calendar with the recommendation to continue them to the second meeting in January (January 18, 2005).

MOTION to approve the Consent Calendar, items with asterisks on the agenda, as amended by the addition of items 9 and 10 (with the recommendation to continue both items to January 18, 2005), in accordance with the staff recommendations.

M/S: Livengood, Gomez. Ayes: 4 Absent: 1 (Polanski)

***7.
Community Advisory
Commission Work Plan** Approved the Community Advisory Commission's proposed 2005 work plan.

***9,
Ethics Awareness Survey** Continued to the second meeting in January 2005 (January 18, 2005).

***10.
Lobbying Ordinance
No. 267** Continued to the second meeting in January 2005 (January 18, 2005).

***11.
Barber Bellew Traffic Signal
(Project No. 4212)** Adopted Resolution No. 7494 granting initial acceptance of the public improvements consisting of a traffic signal installation at Barber Lane, Barber Court and Bellew Drive with diagonal parking and signal coordination (Project No. 4212), subject to a one-year warranty period and reduction of the faithful performance bond to \$21,488.70.

***12.
Off Leash Dog Park** Adopted Resolution No. 7495 granting final acceptance and release of the Contractors bond for the improvements, which included installation of sod, hydroseed, benches, trash

- (Project No. 5072) receptacles, drinking fountain, kiosk, arbor and landscape/irrigation at the Off-Leash Dog Park at Ed Levin County Park (Project No. 5072).
- *13.
Diversified Fire Products
(Project No. 8026)** Approved the Contract Change Order for Diversified Fire Products to enhance emergency communication capability between the City Hall Building and Dispatch in the amount of \$8,415.60.
- *14.
Sewer Modeling** Approved a purchase order to Raines, Melton & Carella for additional sewer hydraulic modeling to include the impact of extra wet weather flows on capacity for an amount not to exceed \$23,240.
- *15.
Coyote Creek Trail, Reach 1
(Project No. 4206)** 1. Approved plans and specifications for Coyote Creek Trail, Reach 1 (Project No. 4206).
2. Authorized advertising for bid proposals.
- *16.
Underground Storage Tank** Awarded the monthly underground storage tank inspection and reporting services to Monette Consulting Services in the amount of \$3,324.00 and approve the transfer.
- *17.
Mechanical Sun Screen
(Project No. 8026)** Awarded contract for installation of mechanical sunscreen at the City Hall Building to California Textiles Inc. in the amount of \$12,510.00.
- *18.
Building Improvements Project
(Project No. 8135)** Awarded the installation of sound insulation baffles and wall insulation for the community room located at the Police Department (Building Improvements Project No. 8135) to Ireland Interiors in an amount not to exceed \$9,800.00.
- *19.
Silicon Valley Intelligent
Transportation System (ITS)
(Project No. 4219)** Authorized the City Manager to execute the agreement amendment with 4 LEAF Inc. for additional services needed to complete the construction closeout phase of the Silicon Valley Intelligent Transportation System (ITS) (Project No. 4219), and prepare documentation for potential claims, in the amount of \$20,000, subject to approval as to form by the City Attorney.
- *20.
Main Sewage Pump Station
Demolition (Project No. 6079)** Authorized staff to approve the contract change order for Main Sewage Pump Station Demolition (Project Non. 6079) in the amount not to exceed \$113,496.77 to ICONCO Inc. to demolish the digester structure, including the removal, testing, and disposal of water and sludge remaining in the structure
- *21.
Election Costs** Approved a budget appropriation in the amount of \$10,000 from the contingency reserve and authorized payment to Santa Clara County in the amount of \$67,128 for the services of the Registrar of Voters for the November 2, 2004, General Municipal election.
- *22.
Workers' Compensation** Approved the year-end final premium for Workers' Compensation Excess Insurance with Ace American Insurance for fiscal year 2003-04 in the amount of \$7,848.90 through Brown and Brown Insurance brokers.

PUBLIC HEARINGS

- 1.
Major Tentative Map
Apton Plaza Project** Acting Planning & Neighborhood Services Director Tambri Heyden reported that on April 14, 2002, the Planning Commission reviewed the site and architectural application and Use Permit for this project; at that time, it was comprised of a five-story mixed use building, 102 residential units, and 6,000 sq. ft. of retail; it came back to the Planning Commission about a year later and to the City Council in September 2004 with modifications to reduce the number of units, the retail floor area, the number of stores, the building height, and the number of parking spaces as well as some minor exterior changes. Ms. Heyden further reported the applicant was now requesting a major tentative tract map to create 96 residential condominiums and one commercial condominium to be sold individually rather than rented. Ms. Heyden said the Planning Commission approved the requested change on December 8, 2004, and recommended approval subject to the conditions included in the Council's agenda packet.

Councilmember Livengood asked for confirmation that the changes were limited to just the items outlined, the units previously envisioned to be rental would now be for sale, and the builder did not perceive or see the need to change any of the floor plans to convert them from rental to for sale. Ms. Heyden responded the builder did not. Councilmember Livengood asked for clarification that the builder would not be coming back to the Council later for changes. Ms. Heyden responded not at this point, and the builder was ready to submit the building permit.

Mayor Esteves opened the public hearing and invited comments.

Rob Means, Milpitas said from the start, this project looked really good, and changing the project from rental to condominiums seemed to make sense. Mr. Means further stated he thought a PRT connection between the north end of Milpitas and the LRT station would benefit not only this project but the Library project and the KB project as well.

Kathryn Manento, Milpitas, inquired if the project was still for seniors and would it also still be available to assist the seniors in grant writing to be able to purchase the property. Ms. Heyden clarified that this was not a senior housing project.

MOTION to close the public hearing.

M/S: Giordano, Livengood. Ayes: 4 Absent: 1 (Polanski)

MOTION to approve the Tentative Tract Map No. MA2004-04.

M/S: Giordano, Livengood. Ayes: 4 Absent: 1 (Polanski)

2.
Ordinance No. 124.37
(Zoning/Sign Code)

Acting Planning & Neighborhood Services Director Tambri Heyden recognized the individuals who had worked on the project by serving on the Code Enforcement Task Force and the Sign Code Task Force who were present in the audience and recognized staff members who also worked on the ordinance.. Ms. Heyden spoke on the increasing importance of beautification in the City, which had been a primary component of several of the City's projects and efforts. Ms. Heyden explained the efforts were important to help compete with other businesses and cities in terms of Economic Development and Smart Growth; were consistent with the Economic Development Commission's new City image goal; were important to attract R&D businesses and workers and to create a desirable environment for those workers to live in; to continue to improve the overall appearance of the City; and to achieve fast and comprehensive Code violation compliance; to ensure compliance that's fair and uniform among the City's businesses and residents; and to have the authority to ensure compliance.

Ms. Heyden outlined the expectations when the Neighborhood Beautification Ordinance was adopted as being a major step for the City in terms of beautification, and there were certain expectations that were established at that time; the objective was to address unsightliness both on private and public property; to establish a minimum continuous level of upkeep, and to phase the program, which meant delaying the citations until a later date when the public awareness could be completed; it was known that there would have to be an on-going evaluation of the program, which had been done on several occasions, one of which led to some Code amendments. Ms. Heyden said Phase 1 included education and outreach; was a complaint-driven enforcement process; several minor Code amendments were adopted after the first year of the program, one of which reduced the notification time frame from long parking from 30 days to 15 days; Phase 2 was rolled out in Spring 2003 with the Council's adoption of Administrative Citation Fees and additional outreach and education was done; and in the Spring 2003, a Zoning Code amendment was adopted to take the success of the Administration Citation process from the NBO and apply it to the Zoning Code. Ms. Heyden reported that between October 2003 and October 2004, staff closed 538 of 565 customer service requests and to do that, 101 of those violations were corrected through the citation process; and of those, only six have not been abated to date.

Ms. Heyden commented on remaining challenges, showing photos of the violation challenges of temporary signs; actions taken to date; and proposed solutions to transition from complaint-driven to pro-active enforcement in both residential and business. Ms. Heyden stated with this proposal, with respect to temporary signs, staff had established a no-fee registration form that included the date the applicant wanted the sign to go up and the date the sign would come down, which would be monitored by staff; the outreach and education portion of the program would include a utility bill insert, an article in the Spring City Newsletter, direct mail flyers to all City businesses, information on the City's Web site and Channel 15, press release, and a 90-day delay was being proposed until the implementation of the education outreach was completed.

Regarding the specific amendments, Ms. Heyden reported there was strong Task Force support for the reduction for the NBO violations from 30 days to 15 days; increase the number of days for zoning violations from 15 days to 30 days, and to establish 30 days for Sign Code violations. There would be the ability to levy fines without notice for certain violations that posed Health and Safety dangers and for recurring intermittent violations. Proposed that the NBO abatement procedure, which was currently established under the Zoning Ordinance and the NBO be added to the Sign Code; the Task Force felt it important to have another avenue of relief for violations currently under the Hearing Process; and the decisions could be appealed to the City Council.

Ms. Heyden reported the Task Force felt it was important that the Sign Code and Zoning Code be given out at the front counter; and felt it was important not to reference those sections in the NBO, but to copy the text so it was readily available and easy to find in both the Sign Code and the Zoning Ordinance.

Senior Planner Dennis Carrington gave an overview of the three categories of the Sign Ordinance with the objectives being ordinance clarity, economic development and flexibility, and enhanced aesthetics. Mr. Carrington said that in looking at the Sign Ordinance, it was found that many terms were not defined, and the amendment reorganized the sign Ordinance to provide definitions for several terms or sign types, proposed that signs designating churches be changed to "church and religious assembly", moved several isolated regulations into separate sections, provided a more effective sign program procedure for commercial and industrial sites, created construction signs, joint use signs, portable sign and temporary promotional sign categories, enhanced the sign program process, provided administrative citation authority and addressed the violations sections of the Sign Ordinance and the Neighborhood Beautification Ordinance.

Ms. Heyden reported the project was exempt from the provisions of the California Environmental Quality Act (CEQA) because there was no possibility that the ordinance text amendments may have a significant effect on the environment; the proposed text amendments will reorganize and clarify the Sign Ordinance, address violations in the Sign Ordinance and NBO and provide for Administrative Citation authority in the Zoning Ordinance. Ms. Heyden reviewed the recommendation to introduce Ordinance No. 124.27, approve transition from complaint-driven to pro-active enforcement, and authorize proceeding with updating the political sign section of the Sign Code.

Councilmember Giordano inquired how the picture shown of a vehicle and some debris in front of a house related to the proposed ordinance. Ms. Heyden clarified that all three ordinances were being looked at and staff was proposing changes to all three; the Sign Code had more changes than the other two proposed ordinances; the only changes to the NBO and the Zoning Code had to do with the number of days to comply, the ability to differentiate between continuous violations and non-continuous violations, and to be able to levy fines with no notice for Health and Safety issues. Councilmember Giordano inquired if that would also include the enforcement process for the NBO. Ms. Heyden stated it would.

Mayor Esteves commented that the economic development portion of the Sign Ordinance amendment would allow off-site signs (especially businesses that have some relationship in one location) and recalled a group of businesses that wanted an off-site sign at Dixon/I-800. Ms. Heyden responded those property owners had been represented on the Task Force, issues

were that the City's Sign Code did not allow signage on an Interstate unless the businesses' driveway was off the Interstate; this Sign proposal would allow the joint use signs; instead of applying for a variance, the Sign Program would allow one to submit their proposal and on the merits of that proposal, and the design aspects of it, it could be approved without having the burden of proof that was normally placed on the applicant for a variance.

Mayor Esteves, addressing temporary sign registration, inquired what the expected volume would be. Ms. Heyden responded under the current Ordinance, 14-days was the limit, and the proposal was to extend it to 30 days explaining that the difficult part was not knowing when the sign went up. Mayor Esteves suggested that temporary signs indicate in small letters (on the sign) the start time. Housing & Neighborhood Preservation Specialist Gloria Anaya reported that from January 1 to October 31, 2004, staff dealt with 70 temporary signs from complaints.

Councilmember Giordano, addressing the Task Force and looking at the Economic Development Commission minutes of November 8 that stated in the report that was issued there had been no positions supported by the majority of the Task Force members, inquired if since that time a vote had been taken by the Task Force, what the composite of that Task Force was, were all members present, and what was the validity of the vote taken. Ms. Heyden responded the vote was taken at the last Task Force meeting (the first week in December), not all the Task Force members were there, it was not a unanimous decision, it was the majority of the members present that supported the amendments including adding administrative citations to the Sign Code, and a separate vote and action was taken on the transition from complaint driven to pro-active, which the majority of the members present supported.

Vice Mayor Gomez, addressing the 300 case backlog, inquired if staff had a breakdown of those cases. Ms. Anaya responded approximately 10% were Health and Safety related and she would not refer to the cases as backlog, but as the existing caseload. Vice Mayor Gomez inquired as to what was the standard response time for the different cases. Ms. Anaya stated staff's standard response time for Health and Safety issues was one to three days; otherwise the standard response time was approximately 5 days. Vice Mayor Gomez inquired if it was strictly staffing that was stopping increasing or improving the response time. Ms. Anaya responded yes. Ms. Heyden stated there was one exception, and that was not having Administrative Authority on the Sign Code; therefore, Sign Code violations in the caseload that Ms. Anaya was referring to, there were cases that had been pending in part of the caseload for 2-1/2 years; notice after notice was sent, but the violators know that staff does not have any teeth in the Sign Code, so there are open cases. Vice Mayor Gomez said he knew signs might be an issue, but they were more an annoyance than anything else; he had not received one call in the last two years regarding signs; and was concerned about moving towards a more pro-active approach about the items people were complaining about (weeds and abandoned vehicles).

Councilmember Livengood said he wanted to make sure that everybody was clear when abandoned vehicles were mentioned as it could have a number of different connotations; what was being talked about tonight was vehicles on private property; if the abandoned vehicle was on public property, it was a pretty quick response through the Police Department to go out and tag the vehicle, and per the California Vehicle Code, wait three days and tow it; so, what was being talked about tonight was somebody who parks their vehicle on jacks or something in the middle of their driveway or on their front lawn. Councilmember Livengood inquired if that also extended to vehicles that were on private property in a driveway with a flat tire. Ms. Anaya confirmed that was so.

Mayor Esteves opened the public hearing and invited comments.

Kathryn Manento, Milpitas, addressing staff's reference to churches and religions, requested a clearer explanation. Mr. Carrington stated the current language for signage that related to churches in the Ordinance states "Church Sign"; what many cities were doing now was to move to a more inclusive language, church or religious assembly, because there were many

others. Ms. Manento inquired if that meant leaving out the church name. Mr. Carrington responded at the present time, the name of the church wasn't included.

Richard Ruth, Milpitas, gave an example of some pro-active Code Enforcement that he experienced on December 6, 2004, when a police officer came to his door and said one of his neighbors had complained that his car was infringing on the sidewalk and he would have to move his car or be cited. Mr. Ruth felt that kind of action of a police officer in Milpitas did not engender any sort of confidence that a program like the one being proposed wouldn't degenerate down into some sort of an activity similar to the one he experienced; hoped everyone on the Council was aware of how these things generally happen; might want to clarify if the enforcement was 7 day/24-hour a day enforcement; felt there were a few problems waiting to develop with any sort of a comprehensive Code Enforcement program for Neighborhood Beautification or for any of the other actions in the two ordinances being discussed.

Greg Haas, a member of the Task Force, said he thought one of the more divisive issues of the presentation was the enforcement mechanism; having served on the Task Force, felt the people worked together and brought a very good proposal to the Council; supported the proposal; the proposal carried a lot of weight and gravity; in an environment where business in the community was being encouraged and at the same time when sweeping proposals were being made to the Sign Code ordinance, thought it was inappropriate to be aggressive in the enforcement posture; and thought a good approach would be to bifurcate the issue, to pass the Sign Code ordinance, and to set aside the enforcement issue for six to twelve months and revisit it after we see how the Sign Code takes affect and after there is public education for the business community so no one is offended.

Paul Stewart, Santa Clara County Association of Realtors, thanked staff and Ms. Heyden in particular for reaching out to the various segments of the community to put together the Task Force; understood that much progress was made on the proposal; many ideas were exchanged; a few disagreements; some resolutions; but, given that, it was felt that more work was needed on the proposal; was particularly concerned with the shift from a complaint driven to a pro-active enforcement; understood there were 101 complaints filed for businesses through October, yet only 6 had not been mediated or abated; questioned why fix it if it's not broken; secondarily, by being pro-active (assuming it could be handled by staff), questioned how it would handle getting rid of the backlog that already existed; lastly, felt there was support for additional education outreach; noted only nine people attended the public meeting that was held; the Sign Ordinance as proposed was something that had much involvement, particularly as it affected realtors because they were the last major industry in the United States that really depended on signage to bring the consumer to the product; would like to (and would be more than happy to help the City and staff) coordinate through the Santa Clara County Association of Realtors, meetings with the Chamber of Commerce or commercial development and commercial development and home building representatives; and didn't want to see the City take a step back by having something that will impact the ability for someone to come into the City.

Heidi Wolfe-Reid, member of the Task Force, said following-up on the previous comments, as far as the changes to the Sign Ordinance regulations, felt it was very positive progress that had been made there; and, as was pointed out, the real issue was the enforcement; felt it was a massive part of what the change was; it had not been looked at very much in depth, had not been discussed, and had not been publicized very well because the meetings as well as the public outreach happened over the holiday periods; as a member of the Task Force, she found a lot of the materials to be very confusing, but, one of the things she had looked at was individual violations (non-continuous violations – i.e., open house signs); and she felt it should be further reviewed with more staff discussions.

Nick Ammann, Santa Clara County Association of Realtors, thanked staff and Ms. Heyden for the job they did in organizing the group; there were serious problems with the Ordinance; felt it needed clarity; felt this was the wrong time to be doing this sort of initiative given the business climate in Milpitas; felt it could be put off for a few months to be looked at and reviewed and come back and see how it could affect the business climate in Milpitas; felt the

pro-active approach was really going to put a different kind of edge to this and was not sure how it would affect the backlog of cases.

Beverly Bryant, Executive Director of the Home Builders Association of Northern California/Southern Division, supported the testimony the Council had heard about the Sign part of the ordinance; described signs as a city's window to the world, a message sent from a city to the rest of the people who come through it; and thought the Ordinance was not in a final state yet and needed some certainty, clarity, involvement with the people (i.e., the business people who were going to be the subjects of the mandates of the ordinance) was tremendously important; thought that taking some or all of the Ordinance back to Committee and making sure it's the way it really wants to be and everyone was comfortable with it was important; in terms of enforcement, it seemed that the current enforcement was very effective; to get enforcement that was pro-active may not be the right thing; and encouraged, on behalf of her organization, to consider this further, look for clarity, look for certainty, and look for Milpitas' best face to the rest of the valley and the State.

Mike Queenan, Milpitas, Community Advisory Commission (CAC) member, stated the CAC fully supported the staff recommendation for the changes and for pro-active enforcement; as a CAC member, he had gone out and visited with many residents; half the people he had spoken with felt the City already had a pro-active enforcement and were wondering why the City wasn't doing more to take care of the things than just fixing the items that were pictured on the screen; they were waiting for somebody to do exactly what the Ordinance was about rather than continuing with a complaint driven process where neighbor is being pitted against neighbor; felt the pro-enforcement change would enhance the attitudes people have, it would bring people together in the neighborhoods, and would stop putting people in each other's face; commenting on the Sign Task Force, he felt the work done by the Task Force was exemplary, it gave more detail to the signing process and the signing definition than the City ever had; felt there was a true interest in the business community in wanting to have input into the signing process, however, they (the business community) didn't participate fully.

Diane McDonough, Milpitas, stated as President of the Chamber, the Board of Directors favored the Sign Ordinance, also, at the Economic Development on December 13, 2004, they voted in support of the Sign Ordinance as well; there were several businesses in Milpitas that were anxious for the Sign Ordinance to pass so they could proceed as was said earlier (off Dixon Landing and California Circle).

Mayor Esteves inquired if Ms. McDonough also approved of both the amendment and enforcement portion. Ms. McDonough responded yes.

Al Garcia, Vice Chair of the Planning Commission, added his support for approval of the ordinance changes; felt it was a well thought through ordinance; compared to what it was, this was definitely an improvement over the current Sign Ordinance; was clarified significantly; the innovative use of things like a matrix and assembling all materials into one section was extremely helpful; another important part was the education and information program that was a part of the proposed ordinance; on the negative side (the enforcement, the code compliance side), felt the real issue was getting the word out to the members of the community on how to comply so it was not complex; the ordinance changes make compliance simpler, easier, faster; all businesses would be competing on an equal footing because all of them would be following the Sign Ordinance; in his opinion, any changes that would be made by any more staff study or anything else would be marginal at best, and it was time to approve it, put some teeth into it, and get on with it.

Vice Mayor Gomez inquired if the Planning Commission discussed all aspects of the Sign Ordinance, including the pro-active portion. Mr. Garcia felt the Planning Commission had and took a look at the way it matched with the NBO and the successes in making sure there was overall compliance; the one thing that came through loud and clear from staff was that this was really a non-punitive approach to how to do business; the real emphasis was sending out letters and to make sure the people know what the rules are.

MOTION to close the public hearing.

M/S: Livengood, Giordano.

Ayes: 4

Absent: 1 (Polanski)

Councilmember Livengood said there were things in the Ordinance that he could absolutely not support and other things he thought were fine but from his perspective, it was difficult for him to adopt what was in front of him; and unlike most of the speakers tonight, he did not support the pro-active sign enforcement. Councilmember Livengood commented that some of the small retail businesses were still in the grips of what had been a very difficult recession for them and as somebody who had a small business for many years, he felt now was not the time to be enacting more bureaucracy on the small business community; wanted to try to recapture them and help them and be a partner to them as they try to generate tax revenue for the City of Milpitas and its residents, not to create more bureaucracy and make it harder for them to do business; felt parts of the ordinance did that while other parts were fine; however, he could not vote to support the Ordinance as it was before the Council but would be willing to look at the issue again and look at ways of paring it down so it did not become business unfriendly and would meet the ultimate goal, which was to encourage Economic Development in the City while at the same time protecting the esthetics of the City.

Councilmember Giordano said her concern was based on process and concern whether there were enough members of the Task Force present that represented the business community that had input into the process.

Mayor Esteves said he appreciated the staff and Commissioners' work on the amendments as well as the contributions from the different committees; it was a lot better than what it was and he felt the urgency to help businesses right now with their signs; the current Sign Ordinance was so restrictive it did not provide off site signs to promote a business; the businesses wanted stability and exposure right now; postponement meant that the old ordinance would be followed, which was not very supportive to the City's businesses; if businesses were to be helped, it has to be done right now; and, most if not all of the amendments pertained to helping businesses get more exposure. Mayor Esteves further stated his tendency was to support the amendments; however, on the enforcement – maybe the pro-active approach could be deferred because of the current workload, and once some workload control was maintained, frequency could be looked at; he felt it was a good idea for staff to have at least a chance to drive around the City and look at public safety/public health issues; the only concern he had was the registration of temporary signs as he did not see it as being that critical, and suggested that the start and end dates be placed on the temporary signs. Mayor Esteves said his position was to approve the amendments, defer the pro-active approach, and not include the registration of temporary signs.

MOTION to have staff bring the item back in 90 days, eliminating the pro-active enforcement portion of the Ordinance and working with all the stakeholders on doing something that has a little more consensus to it.

M/S: Gomez, Giordano.

Ayes: 3

Noes: 1 (Esteves)

Absent: 1 (Polanski)

JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. CALL TO ORDER

Mayor Esteves called to order the regular meeting of the Milpitas Redevelopment Agency, meeting jointly with the City Council, at 8:38 p.m.

RA2. ROLL CALL

Present were Mayor Esteves, Vice Mayor Gomez, and Agency/Councilmembers Livengood and Giordano. Agency/Councilmember Polanski was absent.

RA3. MINUTES

MOTION to approve the Redevelopment Agency minutes of December 7, 2004, including joint meeting with the City Council, as submitted.

M/S: Livengood, Gomez.

Ayes: 3

Absent: 2 (Giordano, Polanski)

RA4. AGENDA

MOTION to approve the agenda and Consent Calendar as amended by the removal of . item RA7 from the Consent Calendar.

M/S: Livengood, Gomez. Ayes: 3 Absent: 2 (Giordano, Polanski)

(Agency/Councilmember Giordano was out of her seat when the votes were taken.)

***RA6.
RETENTION INCENTIVES**

Directed staff to enter discussions with Intersil Corporation regarding retention incentives that may be available (to consolidate their facilities in Milpitas).

**RA5.
LIBRARY PROJECT
CONCEPTUAL DESIGN**

Principal Engineer Mark Rogge reported the schedule, budget, and conceptual design of the Library project were before the Council and proceeded with a PowerPoint presentation reviewing the schedule, the cost plan, and the conceptual design model for the proposed new library. Mr. Rogge further reported the design had been reviewed with County library staff, City staff, several times with the Library Subcommittee, the Library Commission, the Parks, Recreation, and Cultural Resources Commission, the Youth Commission, with progress reports back to the Council; the next step was for the Council to consider approval of the Concept Plan.

Councilmember Livengood commented that he was very pleased with the revision that was made on the north end because it did create what he liked about the recessed element to give prominence to the old building (the historical building); he thought this was a great stepping stone and a very good design to build on from here.

MOTION to approve the conceptual design as recommended by the Library Subcommittee.

M/S: Gomez, Livengood. Ayes: 4 Absent: 1 (Polanski)

**RA7.
AMEND OWNER
PARTICIPATION
AGREEMENT
APTON PROPERTIES**

Acting Planning & Neighborhood Services Director Tambri Heyden reported with the change from rental units to for sale condominiums, there needed to be a revision to the Owner Participation Agreement; in addition, the Council had received a letter from Mr. Valani, Apton Properties, requesting to use the \$378,000 construction loan for down payment assistance for the 19 affordable condominium units, specifically for the nine very low income units (\$42,000 in down payment assistance each).

MOTION to approve the amended Memorandum of Understanding and Owner Participation Agreement with Apton Properties to authorize substitution of apartment units for condominium units and to change the \$378,000 construction loan to down payment assistance for the nine very low income units, subject to approval as to form by the City Attorney.

M/S: Livengood, Giordano. Ayes: 4 Absent: 1 (Polanski)

**RA8.
ADJOURNMENT**

There being no further Redevelopment Agency business, Mayor Esteves adjourned the Redevelopment Agency meeting at 9:00 p.m.

The City Council meeting continued.

REPORTS OF OFFICERS AND BOARDS

**3.
Invocations at Council Meetings**

Mayor Esteves said he placed this item on the agenda and proceeded to read excerpts from a memo to the Council from the City Attorney advising the Council on the legality of invocations as part of a City Council meeting. City Attorney Mattas clarified that the memo was distributed as a confidential memorandum with privilege attached and if it was the desire of the Council to make it public, the privilege should be waived by a majority of the Council.

MOTION to waive privilege of the confidential memo from the City Attorney.

M/S: Gomez, Livengood. Ayes: 4 Absent: 1 (Polanski)

Mayor Esteves continued reading from the memo concerning the legality of invocations and advising that it was permissible at meetings of the City Council so long as it satisfied the Constitutional requirement that it not be used to advance one faith or belief over another;

persons invited to give an invocation should be clearly informed that the invocation should be short, non-denominational, and should not be used to advance or discourage any particular religious viewpoint. Mayor Esteves said his ultimate desire was to propose that Council meetings have a short, non-denominational invocation prior to the start of the Council meeting; the invocation must satisfy Constitutional requirements that it not be used to advance any belief; and with this as a goal, he would like to do some more preparation to make a good decision. Mayor Esteves said his motion tonight would be to direct staff to come back with the following: a comprehensive list of persons that could potentially be participants of this invocation; develop some rules on how to sequence them; get some feedback from participants or the public; develop some clear cut rules regarding invocations so that we are within legal and Constitutional requirements, and maybe a boilerplate might be necessary, and any other specifics for implementation; and with that information on hand, hopefully, the Council would be able to decide.

Councilmember Giordano, referring to when this was first brought up in May, asked what had the Mayor done since that time. Mayor Esteves responded he had done nothing since May as he did not want it to become a political issue and decided to bring it back after the election. Councilmember Giordano asked if the Mayor's request was to move this forward tonight or to study it further? Mayor Esteves said he wanted to ask staff to prepare the information he had enumerated and to come back to the Council for a decision.

Vice Mayor Gomez said he spoke in favor of this back in May, he saw the value in having more community input, however, he had problems with having staff take the lead on this; he thought it would be more appropriate to defer it to the Community Advisory Commission; and inquired about the process of adding it to the CAC's Work Plan. City Attorney Mattas responded the Council could direct an amendment to the CAC's Work Plan (that had been previously approved on the agenda) or the Council could simply direct the matter to the CAC and request it review the matter with whatever information the Council deemed appropriate for the CAC to consider and to report back to the Council. Vice Mayor Gomez said he would be more comfortable having the CAC look at this and making it one of their long-term goals. Mayor Esteves said he didn't have a problem with that as long as there was somebody to bring back this information.

MOTION to direct this matter to the Community Advisory Commission as one of their short-term goals, that the CAC do the leg work on this issue and report back to the Council.

MS: Gomez, Giordano.

City Attorney Mattas asked for clarification if the Council, as part of this referral, wanted staff, when the CAC hears this the first time, to receive some of the information the Mayor previously identified or did the Council desire that to come from the CAC and staff respond to that. Mayor Esteves repeated the list of information he had requested.

City Attorney Mattas said he did work with another city that had an invocation and that city simply provided parameters to representatives of the clergy and the clergy created their own invocations within the confines of those parameters.

Assistant City Manager Blair King stated that if the motion passed, the intent was that the CAC would take on the bulk of the workload, and he felt staff could do an upstage setting to make a productive exercise for them with a minimal amount of effort on staff's part.

Councilmember Giordano commented that typically we would look at what other cities do anyway through the course of the process of evaluating it.

Vice Mayor Gomez said he was willing to include the Mayor's information request as part of the motion but wanted to stress feedback from the community.

VOTE ON MOTION: Ayes: 4 Absent: 1 (Polanski)

4.

Mayor Esteves said he placed this item on the agenda because the two-minute time limit for

Speaking Time Limit

speakers during Citizens Forum had been in effect for two years and he thought whether it should be changed should be reviewed. The Mayor said his inclination for the orderliness of conducting business might be to try a three-minute limit as he believed a lot of information could be passed on to the Council in three minutes.

Vice Mayor Gomez said he would be bringing forward an open government initiative at the first meeting in January, he didn't want to piecemeal open government when it could all be done at once and would prefer waiting until the first meeting in January.

MOTION to maintain the current two-minute speaking time limit for Citizens Forum and continue consideration to the January 4, 2005, Council meeting with the Open Government Ordinance.

M/S: Livengood, Giordano.

Richard Ruth, Milpitas, asked for clarification that this would be considered with open government and a subcommittee would be developing what a proper time might be. Vice Mayor Gomez clarified he would be bringing forward an open government proposal at the first meeting in January and this would be one of the elements. Mr. Ruth said there was a time in some meetings here where he had asked to have another speaker yield their time to him to extend his presentation; he was told that wasn't a proper thing to do; he thought it was a common procedure in the federal government, and said he would like a little clarification on that as this moves along.

VOTE ON MOTION:

Ayes: 4

Absent: 1 (Polanski)

5. Food Pantry Assistance

Mayor Esteves said he would like to bifurcate this item and start with the Milpitas Food Pantry. The Mayor reported that the lease for the Food Pantry would expire in a couple of years or less due to development that may occur in the area; the Food Pantry had expressed its desire to request help from the City with respect to the difficulty of securing a space and/or financial assistance; and he thought the City should provide services in this area as the Food Pantry had been one of the leading groups that serves the poor residents in the area and suggested staff be directed to review and work with the Food Pantry and report back to the Council.

Councilmember Livengood commented that one of the trends he had noticed in other communities was non-profit agencies teaming up and helping each other out with space requirements and dual use of facilities. Councilmember Livengood asked that this be part of the direction – to look at other non-profits in the City that may have space or times when their building was not in use that may be able to help with this.

Councilmember Giordano inquired if this would create a new budgetary expense. Mayor Esteves responded it potentially may.

Vice Mayor Gomez inquired how other cities were dealing with this and what policies they have in place to deal with requests for funding from non-profits and requested staff include that information in its report.

Assistant City Manager King commented that the Council did provide temporary assistance to the Second Harvest Brown Bag Distribution Program and as the request from the Food Pantry was looked at, suggested that a longer term solution for the Second Harvest Program be looked at as well.

Councilmember Giordano asked for clarification that the study was specific to the Milpitas Food Pantry or in general non-profits that would request additional assistance. Assistant City Manager King said as he understood the request, the Council would like staff to look at what options might exist to provide assistance for the Milpitas Food Pantry for its operation when its lease expires; what was also offered with that was that staff would probably also want to bring to the Council a related issue, the Second Harvest Brown Bag Distribution Program, that also had a problem in identifying space for its operation as well.

Vice Mayor Gomez said he wanted to make sure that discussion regarding policy was also included.

MOTION to direct staff to return to the Council with a report on alternatives, fiscal impact, and resources for providing assistance to the Milpitas Food Pantry and the Second Harvest Brown Bag Distribution Program, including a report on how other cities deal with non-profits and what policies they have in place to deal with requests for funding from non-profits.

M/S: Esteves, Gomez.

Ayes: 4

Absent: 1 (Polanski)

Chamber of Commerce Assistance

Councilmember Giordano excused herself and left the dais. City Attorney Mattas explained that Councilmember Giordano had requested the Attorney's Office look into the issue of whether or not she would have a potential conflict of interest; as a caution, the Attorney suggested she step down tonight and if this comes back to the Council, he would have an opinion by then.

Vice Mayor Gomez commented that he thought all members of the Council were members of the Chamber. City Attorney Mattas said if all members of the Council were members of the Chamber and there was a potential conflict of issue, the rule of necessity would apply and suggested the Council may want to table the matter until January 4, 2005, and the City Attorney could advise the entire Council.

Councilmember Livengood stated for clarification that he was a member but the City pays his dues. City Attorney Mattas noted that Councilmember Giordano has historically paid her own dues.

MOTION to continue consideration of assistance for the Chamber of Commerce to January 4, 2005, meeting pending clarification from the City Attorney on potential conflict of interest issues pertaining to Councilmembers being members of the Chamber.

M/S: Gomez, Livengood.

Ayes: 4

Absent: 1 (Polanski)

6. REACH Program

Mayor Esteves said this was another program he heard the City had that ended in 2000 and was a program that provided social and recreational based activities and opportunities for disabled youth, teens, and young adults in the community. The Mayor said he was not asking the Council to decide tonight but to ask staff to review and report back on potential residents who might benefit from the program, potential costs or fiscal impact, staffing requirements or any other obligations, and provide a basis for comparing this program to other programs.

Vice Mayor Gomez said he had no problem if staff wanted to look at the issue again but there was some reason why this program was cancelled, and he would want to find out why it was cancelled, was it a participant issue, how many people were using it in the past, what was the usage, and what was the cost. Vice Mayor Gomez further stated he would like to see staff recommend whether or not this was based on cost benefit and whether this was something worth exploring.

MOTION to direct staff to report back on the possibility of re-establishing the REACH Program, including potential fiscal impact, residents that would benefit, staff requirements, and prior experience with the program.

M/S: Gomez, Giordano.

Ayes: 4

Absent: 1 (Polanski)

UNFINISHED BUSINESS

8. Planning Commission Appointments

City Clerk Gail Blalock reported this item was for the Council to determine the next step in process for Planning Commission appointments; there were a total of three open positions on the Commission (two vacancies and one term expiration in December); eight applications

APPROVED MINUTES
CITY OF MILPITAS

Minutes:	Special Joint Meeting of Milpitas City Council & Milpitas Redevelopment Agency
Date of Meeting:	December 14, 2004
Time of Meeting:	7:00 p.m.
Place of Meeting:	City Hall Council Chambers, 455 E. Calaveras Blvd.

CALL TO ORDER Mayor Esteves called to order the Special Joint Meeting of the Milpitas City Council and the Milpitas Redevelopment Agency at 7:00 p.m. Present were Mayor Esteves, Vice Mayor Gomez, and Councilmember Giordano. Councilmembers Livengood and Polanski were absent.

PLEDGE Mayor Esteves led the Council and audience in the Pledge of Allegiance.

CITIZENS FORUM Mayor Esteves invited members of the audience to address the Council on any subject not on the agenda, asking that comments be limited to two minutes or less.

Rob Means, Milpitas, commented on the House Judiciary Committee hearings going on in Ohio yesterday to look into the election malfeasance and manipulation in the 2004 vote; said what they are coming up with is that there were actually a wide variety of methods used in tilting basically 3-5 percent of the vote they needed to shift over from the Bush column to the Kerry or from the Kerry column to the Bush column and read excerpts from the affidavits filed in conjunction with that investigation.

Mayor Esteves mentioned that Councilmember Polanski was absent because her father passed away and expressed condolences to Ms. Polanski and her family. Mayor Esteves asked for confirmation from the City Attorney that Council Member Livengood was not present because of a conflict of interest. City Attorney State Mattas responded the Mayor was correct.

AGENDA Mayor Esteves said he thought only the EIR would be discussed tonight. City Manager Wilson responded that was correct and to maintain the integrity of the agenda, the Council was only being asked to act on a portion of it—asked the City Attorney if that was correct. City Attorney Mattas responded that was correct, the agenda itself was not being changed; when the staff report was presented, the staff would make a recommendation with regard to limiting the actions that the Council and Agency would take this evening, but it didn't actually change the agenda.

MOTION to approve the agenda.

M/S: Gomez, Giordano.

Ayes: 3

Absent: 2 (Livengood, Polanski)

**PUBLIC HEARING
Elmwood Residential
Project**

City Manager Wilson reported this item was a public hearing to consider approval of the Elmwood residential development project and to authorize the Redevelopment Agency's Executive Director to enter into an agreement with KB Homes South Bay, Inc., for the purchase of sale and development of the Elmwood surplus properties; Troy Fujimoto would be making the staff presentation; and present in the audience were representatives from KB Homes, Larry Klamecki from Santa Clara County, and City staff.

Planner Troy Fujimoto introduced Ernie Glover of GRC Consultants, who was the author of the EIR. Mr. Fujimoto described the project area that included commercial lots and residential lots for 683 homes on approximately 28 acres. Mr. Fujimoto explained that his presentation was specifically geared for the Environmental Impact Report; the EIR analyzed all environmental impacts associated with the project; the Draft EIR was circulated for public review on October 1; the public comment review period ended on November 14 and eight comment letters were received; and the Final EIR was circulated for review on December 3 and one comment letter was received yesterday from the Department of Toxic Substances Control. Mr. Fujimoto reported the EIR covered various environmental impacts including traffic, air quality, noise, biological resources, flooding, drainage, water quality, hazards, and public utilities and facilities. Mr. Fujimoto further reported for purposes of this presentation, he would be providing a summary of traffic, biology, and public utilities and facilities. Mr. Fujimoto stated that the project will generate less traffic than what was assumed in the

Midtown EIR, significant unavoidable traffic impacts were identified at five intersections (and the same intersections, with the exception of Alder/Tasman, were expected to have unavoidable impacts in the Midtown EIR), and described proposed traffic improvements.

Mr. Fujimoto reported the EIR identified that there will be impacts to burrowing owls and a mitigation plan was created that included passive relocation and purchase of land for habitat replacement. Mr. Fujimoto noted that the owl nesting season is between February and August and the plan requires a 250 ft. protection zone around nests that are not vacated by February, making it important to start the mitigation plan as soon as possible. Mr. Fujimoto further reported on sewer impacts stating that residential uses would generate more wastewater than commercial uses. Mr. Fujimoto said the EIR identified significant unavoidable impacts that could not be reduced to a less than significant level. Mr. Fujimoto explained that CEQA allows for a Statement of Overriding Considerations for significant unavoidable impacts when the project provides public benefits that outweigh the impacts identified in the report, and the public benefits were included in the resolution the Council was being asked to adopt. Mr. Fujimoto reviewed the recommendations before the Council to adopt the resolution certifying the Environmental Impact Report including the Statement of Overriding Considerations, the Mitigation Monitoring Plan, and the required CEQA Findings.

City Manager Wilson stated that as this was noticed, it included efforts to review and potentially provide entitlements to the entire project; working with KB Homes and in light of Councilmember Polanski's absence and some work that staff needed to do to clarify some remaining issues with regard to entitlements, staff was recommending that the only part of the package presented be the consideration and adoption and approval of the EIR; that would allow the project to proceed only with regard to the mitigation of the owls, which are on a sensitive timeline based upon their nesting program and procedures; it would allow the project to move forward with that substantial event but no other activity with regard to the project would be provided this evening; the Council would receive those recommendations in conjunction with KB and staff presentation at a date later, probably the second meeting in January, and that would provide a full Council available and also the opportunity for everybody to come together with the positive and total recommendations with regard to some of the issues that were recognized by the Planning Commission and need to be clarified in the report.

Vice Mayor Gomez inquired if the public would be allowed to speak on the project regardless of whether it was out of the scope of the EIR; that way the Council could consider those comments when it does talk about the project so those people wouldn't have to come back. City Manager Wilson said that could be done, with the consent of the attorneys, and a formal record of those comments would be made. Mr. Wilson also advised the Council that staff was asking that the public hearing be continued, but staff would re-advertise the public hearing as a courtesy to be sure the public was aware of the new time frame on those opportunities to speak. Mayor Esteves inquired if this would impact the overall schedule of the project stating that the critical part was the burrowing owls and, hopefully, the EIR would address that and let the project continue. Mr. Wilson responded that was correct.

Councilmember Giordano inquired how quickly would the plans come back so that the Council will have more than a few days to review them and people will have a chance to respond to them. City Manager Wilson responded all the issues should be resolved and the information provided to the Council no later than the first of next week.

Mayor Esteves, referring to the letter from the Department of Toxic Substances Control, inquired how that was addressed in the EIR. Acting Planning Manager James Lindsay responded that comment letter was just received yesterday and the applicant had informed staff that the studies mentioned in the report have been done and staff will be getting copies to have on file; they were studies normally done in the course of a real estate transaction, and the soil sampling was done throughout the project site but staff just didn't have record of that but will make sure the City records do have that report on file. Mayor Esteves said he reviewed the comments of the Planning Commission and didn't see any comments with respect to the EIR and inquired if that was accurate. Mr. Lindsay responded there was no public testimony on the EIR at the Planning Commission meeting and no comments on the EIR from the Commission.

Mayor Esteves opened the public hearing and invited comments, noting that comments were not limited to the EIR.

Rob Means, Milpitas, said he had a question about the burrowing owl relocation plan because he had heard stories about mitigating wetlands and it was his understanding that particular process does not work very well, the new wetlands areas that are created really don't turn out the way we want them to or they don't support the wildlife that we expected them to and just really haven't been particularly successful. Mr. Means asked if there's been any feedback because he knew the burrowing owl situation had been mitigated here in the past and was wondering what the results were of those mitigation efforts and whether the burrowing owl population continued to thrive or not.

Acting Planning Manager Lindsay responded the burrowing owl relocation and mitigation plan was approved by the State Department of Fish and Game in consultation with advocacy groups for the owls and in consultation with biologists and experts in the field; staff felt that the relocation plan had been successful in the past; staff will continue to follow the Department of Fish and Game's protocol as further enhancements are made for other projects noting that staff had found there are enhancements each time there is a project that has a mitigation plan for burrowing owls and more is learned each time. Mr. Lindsay said staff felt this program would be a success and would insure that it meets the satisfaction of the Department of Fish and Game.

Mayor Esteves asked how do we really know that the mitigation or the program is successful. Mr. Lindsay responded it was his understanding it would be monitored by the State Department of Fish and Game. City Manager Wilson added that the Department of Fish and Game does maintain a very comprehensive record of their assessment of success and they report that on an annual basis and also they consistently upgrade the requirements. Assistant City Manager Blair King pointed out that Larry Klamecki of Santa Clara County had been the principal point person on the burrowing owl issue and has been working with a biologist in developing the mitigation plan that was approved by Fish and Game and invited Mr. Klamecki to comment.

Larry Klamecki, Special Projects Manager for Santa Clara County, said he was responsible for implementing the Department of Fish and Game plan for the burrowing owls on the Elmwood property; that program focused on increasing the Bay Area's supply of appropriate habitat for this particular species of birds; that was determined first by identifying property that already has a population of burrowing owls that is not threatened by development or any other outside factors and has room for expansion of the current population; the County has entered into contracts to acquire conservation easement for all eternity of 78 acres, which was one and one-half times the normal ratio in the event mitigation takes place on site; the cost was somewhere in the neighborhood of \$1.2 million plus a maintenance program and fee to secure the property that's already been qualified by the Department of Fish and Game; their management plan had been analyzed and approved by the Department of Fish and Game, and their biologist was conducting onsite studies to be sure that the population count on the Elmwood site was accurate and so that when they do, in the next week or so, close escrow on acquiring the property for the conservation easement, they will have adequate property. Mr. Klamecki noted they were purchasing approximately 9 1/2 acres for each historically occupied burrow; when they ran their several studies, they had eight occupied burrows on the site.

Vice Mayor Gomez, referring to some letters submitted by residents, asked for clarification as to the impact on the schools and the Milpitas Unified School District, and said he thought the statement was they were concerned about public school impact and those were not properly addressed in the EIR. Mr. Lindsay explained how school impacts were addressed for a project this size noting that State law did limit what the City can actually required through an EIR; the impacts to schools were regulated through school impact fees, payment of school impact fees had been deemed sufficient mitigation, and staff estimated approximately \$2 million in school impact fees will be paid by this development. Vice Mayor Gomez said another question sent to him had to do with sewage flows and the water treatment capacity and asked what process was used to make sure the water treatment plant can handle extra development. Mr. Lindsay responded the City purchases capacity at the treatment plant and the treatment plant does have additional capacity beyond that; Milpitas was at or near that capacity right now and any development that comes forward that goes above and beyond the City's projected flow, the City would ask for their participation in purchasing additional capacity; in this case, the City was working through an arrangement with West Valley cities to purchase an additional capacity that they are not using.

Mayor Esteves inquired if there were any further public comments. There were none.

MOTION to continue the public hearing to January 18, 2005.

M/S: Giordano, Gomez. Ayes: 3 Absent: 2 (Livengood, Polanski.)

Mayor Esteves asked, with respect to traffic and circulation and assuming the mitigation plans are implemented, what would be the worse level of service and what would be the intersection. Mr. Lindsay responded a large number of intersections were studied within the traffic analysis and five intersections were identified as having impacts that could not be mitigated to a significant level, noting that they currently are very impacted with existing development and carried the bulk of the regional traffic and historically Milpitas, being at the crossroads of Silicon Valley, does suffer this regional traffic impact and has had projects contribute their fair share towards improvement.

City Attorney Mattas said the Council did have in their packet this evening the first resolution certifying the environmental impact report for the Elmwood residential project and commercial development and adopting related mitigation findings regarding alternatives, a statement of overriding considerations, and a mitigation and monitoring program; if the Council wished to take action on that, it could do so and advised the Council that since it was in the form of a resolution, it would require three affirmative votes for passage.

MOTION to adopt Resolution No. 7493, a resolution of the City Council of the City of Milpitas certifying an Environmental Impact Report for the Elmwood residential and commercial development project and adopting related mitigation findings, findings regarding alternatives, a Statement of overriding Considerations and a Mitigation Monitoring Program pursuant to the California Environmental Quality Act (as stated in the resolution in the Council's packet).

M/S: Giordano, Gomez. Ayes: 3 Absent: 2 (Livengood, Polanski)

ADJOURNMENT

There being no further business, Mayor Esteves adjourned the meeting at 7:34 p.m.

Gail Blalock
City Clerk/Secretary

**The foregoing minutes were approved by the City Council as submitted on
January 4, 2005.**

Gail Blalock
City Clerk

Date

APPROVED MINUTES
CITY OF MILPITAS

Minutes:	Special Meeting of Milpitas City Council
Date of Meeting:	December 7, 2004
Time of Meeting:	6:30 p.m. (Closed Session)
Place of Meeting:	City Hall Council Chambers, 455 E. Calaveras Blvd.

ROLL CALL

Mayor Esteves called to order the Special Meeting of the Milpitas City Council at 6:30 p.m. Present were Mayor Esteves and Councilmembers Gomez and Livengood. Vice Mayor Dixon and Councilmember Polanski were absent.

CITIZENS FORUM

Mayor Esteves invited members of the audience to address the Council on any subject not on the agenda, requesting that remarks be limited to two minutes or less.

There were no requests.

CLOSED SESSION

Mayor Esteves publicly stated the Council would convene in Closed Session to discuss the Following two items listed on the Special Meeting Notice:

1. **CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**
(Pursuant to Government Code Section 54956.9[a])
Milpitas v. RRM et al. Alameda County Superior Court No. RG 03088899
2. **CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**
(Pursuant to Government Code Section 54956.9[a])
Peterson WCAB Claim Nos. SJ125152, SJ126560, SJ126559, & SJ126553

Mayor Esteves adjourned the meeting to closed session at 6:31 p.m.

RECONVENE

The Special City Council reconvened at 6:45 p.m.

**CLOSED SESSION
ANNOUNCEMENTS**

City Attorney Steve Mattas announced that with regard to the Milpitas v. RRM Litigation matter, the Council, by a 3/0 vote, approved a settlement agreement related to the Main Fire Station construction litigation pursuant to which the defendants, RRM, Watry, Aztec Management, and Watco would collectively pay the City/Agency \$343,750 to settle the City's lawsuit.

ADJOURNMENT

There being no further business, Mayor Esteves adjourned the Special City Council meeting at 6:46 p.m.

Gail Blalock
City Clerk

**The foregoing minutes were approved by the City Council as submitted on
December 21, 2004.**

Gail Blalock
City Clerk

Date

APPROVED MINUTES
CITY OF MILPITAS

Minutes:	Special & Regular Meetings of Milpitas City Council
Date of Meeting:	December 7, 2004
Time of Meeting:	7:00 p.m. (Swearing In Ceremony)
Place of Meeting:	City Hall Council Chambers, 455 E. Calaveras Blvd.

CALL TO ORDER/ROLL	Mayor Esteves called to order the Special and Regular meetings of the Milpitas City Council at 7:00 p.m. Present were Mayor Esteves and Councilmembers Gomez and Livengood. Vice Mayor Dixon and Councilmember Polanski were absent.
---------------------------	--

PRESENTATION OF FLAGS/PLEDGE	Members of Girl Scout Troop No. 1188 presented the Flags and led the Council and audience in the Pledge of Allegiance.
---	--

MINUTES	MOTION to approve the minutes of the Special City Council meeting on November 2, 2004, and the City Council minutes of November 16, 2004, including joint meeting with the Redevelopment Agency, as presented.
----------------	--

M/S: Gomez, Livengood.	Ayes: 3	Absent: 2 (Dixon, Polanski)
------------------------	---------	-----------------------------

ELECTION RESULTS RESOLUTION	City Manager Thomas Wilson reported before the Council was a resolution of the City Council confirming the canvass of returns and declaring the results of the November 2, 2004, General Municipal Election.
--	--

MOTION to adopt Resolution No. 7486 confirming the canvass of returns and declaring the results of the General Municipal Election held in the City of Milpitas on November 2, 2004.

M/S: Gomez, Livengood.	Ayes: 3	Absent: 2 (Dixon, Polanski)
------------------------	---------	-----------------------------

RECOGNITION OF VICE MAYOR PATRICIA DIXON	Mayor Esteves announced that unfortunately Vice Mayor Dixon was not present to receive a plaque of appreciation because, as everybody knows, she has served our City with the best of service and interests for all of us. Mayor Esteves suggested that the plaque might be presented to her at another event or at another time.
---	---

SWEARING IN	Mayor- Esteves invited Judge Thang Barrett to swear in the new members of the Council.
--------------------	--

Judge Barrett administered the Oath of Office individually to Councilmember Debbie Giordano, Councilmember Bob Livengood, and Mayor Jose Esteves.

COMMENTS	Councilmember Giordano, Councilmember Livengood, and Mayor Esteves each shared comments on their campaigns, their goals for the future, and expressed appreciation to their families, supporters, and the voters.
-----------------	---

RECESS FOR REFRESHMENTS	Mayor Esteves invited everyone to enjoy some refreshments in the downstairs lobby. Mayor Esteves recessed the Council meeting at 7:45 p.m. announcing that the Council would return for a brief regular business meeting following the recess.
------------------------------------	--

RECONVENE	Mayor Jose Esteves reconvened the City Council meeting at 8:08 p.m. Present were Mayor Esteves and Councilmembers Giordano, Gomez, and Livengood. Councilmember Polanski was absent.
------------------	--

SCHEDULE	MOTION to approve the schedule of meetings for the month of December as presented.
-----------------	--

M/S: Gomez, Livengood.	Ayes: 4	Absent: 1 (Polanski)
------------------------	---------	----------------------

CITIZENS FORUM

Mayor Esteves invited members of the audience to address the Council on any subject not on the agenda, requesting that remarks be limited to two minutes or less and noted that the Clerk would be using the timer to indicate when two minutes were up.

Martha McNulty expressed her opinion regarding the Milpitas Police and Firefighters involvement in the campaign for City Council; felt it was unethical and manipulative; hoped the activity would be investigated and action taken to ensure something like that did not happen again.

Art Swanson asked everyone to lend an ear to one of the best leaders that this Country had developed who runs a talk show on Saturday nights; his words need to be learned by the people throughout the United States; and felt it was everyone's duty to find out what is a major thing for the preservation of the world.

Rob Means spoke about Peak Oil (half of the World's production is gone); by the end of this decade that peak would be faced; areas that need to be focused upon were heating and cooling of homes and buildings, transportation, and food supply; referred to an editorial in the San Jose Mercury News that showed VTA and noted the editorial did not even consider Peak Oil when addressing the problems VTA was facing.

George Perez, a Milpitas Firefighter, spoke about the Annual Milpitas Holiday Toy and Food Drive sponsored by the Milpitas Fire Department and Milpitas Firefighters Local 1699; flyers were out regarding the drive; cash donations were welcome and could be made to Milpitas Firefighters Local 1699 and mailed to any of the Milpitas Fire Stations; barrels had been placed throughout all City Facilities; and the flyers contained contact numbers for donations as well as for citizens requesting toys and food for their family.

ANNOUNCEMENTS

Mayor Esteves congratulated the Nextel Store that recently opened on Milpitas Boulevard; congratulated and thanked the Golden Hills Association for the current Phantom Art Gallery on display at the Community Center; thanked the Vietnamese Lions Club for sponsoring a dinner for seniors young people, families at the Community Center and thanked Irene Whitesides for her leadership of the Junior Club; thanked staff for the beautiful tree lighting ceremony; and thanked the sponsor of the Festival of the Lights for the very entertaining show.

CONFLICTS OF INTERESTS

City Attorney Steve Mattas asked the members of the Council to identify any potential conflicts of interest with any of the items on the agenda. There were none.

MOMENTS OF REFLECTION

Mayor Esteves suggested this be skipped this evening because of having a new Councilmember.

AGENDA

MOTION to approve the agenda as submitted.

M/S: Livengood, Giordano.

Ayes: 4

Absent: 1 (Polanski)

CONSENT CALENDAR

Mayor Esteves inquired if anyone wished to remove any items from the Consent Calendar.

Councilmember Giordano asked that item 5 (Odor Control Update) be removed.
Councilmember Gomez requested item 1 (Appointment to VTA Board for December) be removed.

Councilmember Livengood asked for clarification that the supplemental item regarding election of a Vice Mayor was not a consent item. Mayor Esteves confirmed that it would be the next item of discussion.

MOTION to approve the Consent Calendar, items with asterisks on the agenda, as amended by the removal of items 1 and 5, in accordance with the staff recommendations.

- *2.
Appointments &
Reappointments**
- Approved the Mayor's appointment of Kathryn Manento to the Alternate No. 2 position on the Senior Advisory Commission for a term expiring December 2005, moving Barbara Ebright from Alternate No. 2 to Alternate No. 1, with a term expiring December 2006, moving Joyce Dovlet from Alternate No. 1 to a regular member with a term expiring December 2006, and reappointing Patrick Yung to the Recycling and Source Reduction Advisory Commission for a term expiring October 2007.
- *4.
BART Extension EIR**
- Noted receipt and filed report on Final Environmental Impact Report for BART Extension to Milpitas, San Jose, and Santa Clara.
- *6.
July 4th Update**
- Noted receipt and filed the 4th of July events update.
- *7.
Vehicle Mtce Supervisor**
- Approved filling the Vehicle Maintenance Supervisor position.
- *8.
Ordinance No. 48.16
Solid Waste**
- Waived full reading and adopted Ordinance No. 48.16 amending sections 3.30, 3.31, 4.20, 7.20 and 9.91 of Chapter 200, Title V, of the Milpitas Municipal Code relating to solid waste service changes.
- *9.
Ordinance No. 38.766
Zoning**
- Waived full reading and adopted Ordinance No. 38.766 amending Chapter 10, title XI of the Milpitas Municipal Code to add tutoring centers in the Highway Services District.
- *10.
Grant Application**
- Adopted Resolution No. 7487 authorizing the filing of an application to the California Integrated Waste Management Board (Senate Bill 1346 Rubberized Asphalt Concrete Grant Program).
- *11.
Weed Abatement**
- Adopted Resolution No. 7488 declaring weeds on specific properties to be a public nuisance and scheduling a public hearing for January 4, 2005.
- *12.
Final Acceptance
Project No. 4182**
- Adopted Resolution No. 7489 granting final acceptance and releasing the contractor's bond, 2003 Slurry Seal Project No. 4182.
- *13.
Final Acceptance
Project No. 4182**
- Adopted Resolution No. 7490 granting final acceptance and releasing the contractor's bond, 2003 Street Resurfacing Project No. 4182.
- *14.
Final Acceptance
Project No. 6093**
- Adopted Resolution No. 7491 granting final acceptance and releasing the contractor's bond, SBWR Infill (M-4) Town Center Segment, Project No. 6093.
- *15.
Classification Plan**
- Adopt Resolution No. 7492 approving the recommendation to reclassify a regular, full-time classified employee, Mr. Eric Weisler, from his current classification of Vehicle Maintenance Worker II to the classification of Vehicle Maintenance III effective the first full pay period in January 2005.
- *16.
Actuarial Consultant
Retiree Medical Benefits**
- Authorized the City Manager to execute agreement with Nicolay Consulting Group for actuarial valuation on retiree medical benefits, subject to approval as to form by the City Attorney.
- *17.
State Homeland Security
Grant Funds**
1. Authorized City Manager to execute agreement between Santa Clara County and the City of Milpitas for acceptance of State Homeland Security Grant funds, subject to approval as to form by the City Attorney;
 2. Approved budget appropriation in the amount of \$15,646.97 from Santa Clara County to

the Fire Department OES budget.

***18.
Contract Engineering Services**

Approved agreement amendment with Harris & Associates and authorized City Manager to execute the same, subject to approval as to form by the City Attorney.

***19.
PG&E Easement
Telecommunication Antennas**

Authorized the City Manager to execute the agreement modifying easement and related documents, subject to approval as to form by the City Attorney.

***20.
Engineering Design Services
Project No. 4200**

1. Approved budget appropriation in the amount of \$60,000 from the Street Fund into the Singley Area Street Rehabilitation Project No. 4200;
2. Authorized the City Manager to execute the agreement amendment with Design Engineers Group in the amount of \$188,502.20, subject to approval as to form by the City Attorney.

***21.
Bid Award
Replacement Dispatch Equip.**

Awarded the bid for the purchase of the HP CAD workstations to the lowest bidder, Surah, in the amount of \$22,775.80 including tax and shipping.

***22.
Miscellaneous Vendors**

Approved \$11,341.50 to Resource Action Programs for educational material dealing with water conservation (funds are available in the Utility Engineering operating budget).

**XIIIA.
Vice Mayor Election**

Mayor Esteves read the following from the agenda: The adopted City Council Handbook provides that the Vice Mayor be elected from those on the Council during the first meeting at which the Mayor and returning or incoming Councilmembers commence their terms. Mayor Esteves recommends that the Vice Mayor be selected based on seniority of votes; the Councilmember who received the highest number of votes in their most recent election would be elected Vice Mayor. In accordance with that procedure, Mayor Esteves asked Councilmember Livengood if he would accept the position of Vice Mayor, and Councilmember Livengood declined. Mayor Esteves is recommending the election of Councilmember Polanski as Vice Mayor since she received the highest number of votes in the November 5, 2002, Council election.

Mayor Esteves stated that, due to the Brown Act, he had not spoken to Councilmember Polanski regarding the position of Vice Mayor.

Councilmember Livengood said he appreciated the sentiment involved and the work the Mayor put together; however, he felt more comfortable with the system that had always been used which was basically the Councilmember who enjoys the confidence of the majority of the Council become Vice Mayor was the person selected; he did not like the system where the person who received the most votes becomes Vice Mayor because the idea was to spread it out and have other people have the responsibility; he appreciated the Mayor's efforts; however, he proposed a motion to elect Councilmember Armando Gomez as Vice Mayor; he has two years experience on the Council, has been a leader in things like open government and other things that were important to Councilmember Livengood, and he had complete faith in Councilmember Gomez's ability to do the job.

Councilmember Giordano added her comments that she had watched Councilmember Gomez and his leadership abilities and seconded the motion.

MOTION to elect Councilmember Armando Gomez as the new Vice Mayor.

M/S: Livengood, Giordano.

Mayor Esteves explained that he took care on how he was trying to select the candidate for Vice Mayor; he also understood that each Councilmember had their own way of voting and selecting their choice.

VOTE ON MOTION

Ayes: 3 Noes: 1 (Esteves) Absent: 1 (Polanski)

JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

**RA1.
CALL TO ORDER**

Mayor Esteves called to order the regular meeting of the Milpitas Redevelopment Agency, meeting jointly with the City Council, at 8:23 p.m.

**RA2.
ROLL CALL**

Present were Mayor Esteves, Vice Mayor Gomez, and Agency/Councilmembers Livengood and Giordano. Agency/Councilmember Polanski was absent.

**RA3.
MINUTES**

MOTION to approve the Redevelopment Agency minutes of November 16, 2004, including joint meeting with the City Council, as submitted.

M/S: Livengood, Gomez. Ayes: 3 Abstain: 1 (Giordano) Absent: 1 (Polanski)

**RA4.
AGENDA**

MOTION to approve the agenda and consent calendar as submitted.

M/S: Gomez, Livengood. Ayes: 4 Absent: 1 (Polanski)

***RA5.
2003-2004 ANNUAL REPORT**

Noted receipt and filed the Milpitas Redevelopment Agency Fiscal Year 2003-2004 Annual Report.

**RA6.
ADJOURNMENT**

There being no further Redevelopment Agency business, Mayor Esteves adjourned the Redevelopment Agency meeting at 8:24 p.m. to 6:00 p.m. Tuesday, December 14, 2004.

The City Council meeting continued.

REPORTS OF OFFICERS AND BOARDS

**1.
VTA Board Appointment**

Vice Mayor Gomez stated due to the complexity of the issues going on with the VTA and the number of issues coming up over the next week, he wanted to make a motion that Councilmember Livengood be the representative given his history with transportation and because he had also served on the Santa Clara County Transportation Commission.

MOTION to appoint Councilmember Livengood be the City's representative for the VTA Board for the December 7 and 21, 2004, meetings.

M/S: Gomez, Giordano.

Mayor Esteves asked for clarification if the vote was for the next meeting or for the full year. City Manager Wilson clarified that there were some meetings staff had been advised that were forthcoming between December 7 and 21; this would be just for that period of time to accommodate those meetings prior to the next Council meeting on the 21st. Vice Mayor Gomez stated the motion was for the period of December 7 through 21, 2004. Mayor Esteves said there would be an appointment for the year at the next meeting.

Mayor Esteves explained the reason he was volunteering his services to sit at these meetings was he was part of the Transportation Committee and saw the urgency to attend the next meeting; he was happy that someone else would pick up the task as he knew everyone was loaded with jobs.

VOTE ON MOTION: Ayes: 4 Absent: 1 (Polanski)

Mayor Esteves congratulated Councilmember Livengood for stepping up to the plate and explained it took some time to fulfill this function of the VTA Board representative.

Councilmember Livengood requested staff update him as soon as possible by providing the materials on Wednesday (December 08, 2004) so he could get up to speed.

3. Council Appointments

Mayor Esteves expressed his appreciation to Councilmember Giordano for bringing up this item because there may not be a clear-cut rules on the appointments; stated he had prepared a list of all the Boards and Commissions that could have appointments, including all the different Commissions; suggested the Councilmembers look at the list, the time involved, the schedules, and their individual interests; and at the next meeting the appointment process would be decided by the Council; also, if more than one Councilmember was interested in a particular appointment, maybe they could be rotated. Mayor Esteves requested that the selection process be identified and defined at the next Council meeting.

Councilmember Giordano explained the reason she brought this item up was to review the current Commission appointment policy and procedures because it had been brought up by at least one of her constituents; she was trying to accomplish having the most qualified in the assignments; she believed the process should be more inclusive and should involve many more in the decision making process; felt the Commission appointments might be looked at from the widest possible pool of applicants; she had a motion that she felt may accomplish that task; and asked staff to come back with a report on how residents are informed of vacancies and what may be done to better inform the public of such vacancies to allow a greater number of applicants.

Mayor Esteves said that staff could provide all the materials to review the notification of vacancy and selection processes, and have the matter agendaized for the next Council meeting.

MOTION that a subcommittee be created for the approval of any Council appointments, including, but not limited to Regional Boards and Agencies, City Commission liaisons, and Council Subcommittees; make the recommendations for Council approval of any appointments to any City Commissions or Task Forces, except as set down by ordinance; also move that Vice Mayor Gomez and Councilmember Livengood would serve on this subcommittee.

M/S: Giordano,

Mayor Esteves asked if Councilmember Giordano was creating a Council Subcommittee? Councilmember Giordano responded yes, and the subcommittee would be to bring forth the recommendations to the Council for approval of any Council appointments and/or Commission appointments.

Mayor Esteves reiterated that Councilmember Giordano was suggesting that the Council create a subcommittee that would define the process of selecting Commission liaisons, or Commissioners, or anyone assigned. Councilmember Giordano stated that was not how the motion read; it was to make the recommendations to the Council for approval of any Council appointments or Commission appointments.

Councilmember Livengood said he would like to try to bifurcate the motion, stating that on one hand, there were assignments to Council Committees that the Council served on as liaisons; on the other side there were appointments to City Commissions; in the recent past, he did not know what discussion had gone on relating to Council assignments because he was never approached as to what assignments he would be interested in; inquired if Councilmember Giordano was creating the subcommittee as a way of opening it up and have the subcommittee make recommendations back to the Council for approval, he would support it as he did not feel it should be just the Mayor making the assignments without discussing it with other Councilmembers, as it was not inclusive; and wanted all Councilmembers treated equally; and agreed that the creation of a subcommittee that would come back to the Council with recommendations for assignments that is approved by the Council. Councilmember Livengood, referring to the second part of the motion relating to appointments of City Commissions; had a problem with the recent past in that some Councilmembers were asked for input regarding reappointments to Commissions while other Councilmembers were not asked; felt it was patently unfair and that all Councilmembers should have the same ability to

have input into those issues; if Councilmember Giordano was saying that the subcommittee would make recommendations to the Council for appointments to City Commissions, he would be supportive.

Councilmember Livengood inquired what the City ordinances said about appointments to City Commissions. City Attorney Mattas stated with regards to the Planning Commission, the City had a Municipal Code provision that specifically related to the appointment of Planning Commissioners, and has the Council select Planning Commission appointments; the City Council Handbook also identified that appointments to Boards and Commission of the City are made upon recommendation of the Mayor with confirmation by the Council.

City Attorney Mattas recommended to the Council that it may wish to solicit further input from the City Attorney's office as to issues related to appointments and have the matter calendared for a subsequent meeting.

Councilmember Livengood inquired if there was a difference between the two issues. City Attorney Mattas responded the liaison positions were within the purview of the Council to identify Council appointments; regarding the Commissions, Milpitas operated under a directly elected Mayor structure and there were specific Government Code provisions relevant to directly elected Mayors and appointment processes; he felt the Council would benefit from advise on the issue before a final decision was made. Councilmember Livengood, reiterating Mr. Mattas' statement, said he understood Mr. Mattas to be saying that the issue of the assignments to the different committees, the liaisons, was probably not an issue as it related to the Government Code, but that appointments to City Commissions was. Councilmember Livengood further stated appointments to liaison positions could be moved forward tonight as he did not feel there were any legal issues that would encumber that issue.

Mayor Esteves said he did not have a problem with the appointment of liaisons; however, he wanted to refresh everyone's memory that appointments to subcommittee's passes through the Council and all those appointments had been approved by the Council; and if the Council wished to have a subcommittee to do the preparation, he would not have a problem with that

Councilmember Livengood said it seemed that the subcommittee, as it related to Council assignments, could be acted upon now; and the issue of Commission appointments could be acted upon at a later meeting once all the information had been gathered.

City Attorney Mattas repeated that there were provisions as they relate to directly elected Mayors; ultimately, the entire Council approves and confirms all appointments; and his office would provide a memo to the Council regarding the issue prior to the next Council meeting.

Mayor Esteves reminded everyone that the practice had been an inherited practice from past mayors. Mayor Esteves stated although this was not a public hearing item, the Council may wish to hear public input; and requested speakers limit their comments to two minutes or less.

Kathryn Manento said she was enamored with what was being said about the constituents being involved in hearings and knowing when to apply, but she got lost when it became a discussion about the Mayor and the Council voting because the Mayor makes the appointments and the Councilmembers all have to vote on it – which was very simple – to make yourself another job makes us, the people, your constituents, out of the picture again, and it didn't seem that the Council was concerned about the constituents any more because it became a topic between legalities and the Mayor still appoints – the Council still has to vote as a body, but the issue of really how do you make it more aware for constituents to know when there's vacancies became very – a very quiet issue, and that's what we want to know – when can we help and use our skills and talents to be team players and help the Council as well, and she didn't hear that.

Councilmember Giordano offered an amendment to her motion.

MOTION that:

1. A Council subcommittee be created to make the recommendations for Council approval for any Council appointments including, but not limited to, regional boards and agencies, City Commission Liaisons, and Council subcommittees;
2. Vice Mayor Gomez and Councilmember Livengood serve on the subcommittee; and
3. A staff report to come back regarding how residents are informed of vacancies and what can be done to better inform the public of such vacancies to allow for a greater pool of applicants.

M/S: Giordano, Livengood.

Councilmember Livengood stated one of the reasons he felt things should be done differently was because there recently was a vacancy on the Planning Commission, it was advertised in the Milpitas Post, placed on the City Web Site, and on all kinds of different media and only one application was received, which was not acceptable.

Mayor Esteves reported that for the first time, the City's boards and commissions had the minimum of vacancies compared to all the previous administrations; they were almost 100% occupied because this City Council had been appointing members to vacancies as soon as possible; and he did not see the change of having a subcommittee, another step in trying to recruit applicants, and doing another bureaucracy in this Government; it was always nice to have a direct application presented to the Council and having it approved; with respect to the Planning Commission and all of the other Commissions, he knew that staff had fully exhausted its capacity to advertise and felt staff was doing the best it could and did not see any more room for improvement.

VOTE ON MOTION:

Ayes: 3 Noes: 1 (Esteves) Absent: 1 (Polanski)

Councilmember Livengood noted that the Mayor had provided the Council with information on the Council assignments and requested that Vice Mayor Gomez and himself meet on the matter immediately to prepare to make recommendations at the next Council.

Mayor Esteves said that the availability of the Councilmember needs to be considered when making the recommendations; he had a letter from Councilmember Polanski stating she may not be available for daytime meetings; he also may not be available for daytime meetings; and there was an issue of some interests and expertise when making recommendations.

UNFINISHED BUSINESS

5. Odor Control

Councilmember Giordano explained her reason for pulling this item from the Consent Calendar was, being a new Councilmember, she wanted to bring some questions to the table; she did not know if they had been answered in the past; and looking at the complaint process for registering the odor complaints, inquired what the timeliness was in responding to the complaints and inquired what the City was doing in terms of how the complaint process actually works (how is it registered) and what was the timeliness was. Councilmember Giordano stated she had been informed by a resident that response is within 24 hours after the complaint is registered and it did not serve the purpose of identifying the order after it was gone, and it seemed there was a more immediate need.

Principal Engineer Darryl Wong presented a background on the odor mechanism that was currently in place, explaining there were two authorities for odor control: Bay Area Quality Management District, which had a purview over the entire region; the other agency was the Local Enforcement Agency (that is, with the city of San Jose) and was responsible for one part of the odor problem – odors that may be coming from the landfill (the compost) facilities. Mr. Wong explained how the City had worked with both agencies since they have enforcement authority and had worked out a mechanism for handling odor complaints.

Councilmember Giordano inquired how long the rapid notification been had been in place. Mr. Wong responded staff started working with the different agencies about a year ago; it took a few months to begin the development of the process; initially, when the project was first being worked on, there was not much data that was shared with staff; the first report staff received was about 90 complaints in one month; when staff started putting in the rapid notification a decrease was noticed; and it was taking a while to decrease.

Mr. Wong said the other thing staff observed was that because the odor services by nature handle material that is organic, there was always the possibility that some odor would be generated; staff wanted to work with the different agencies to make sure they placed what they could in the way of best management practice; staff recognized they were the experts in their system; and the City hired an independent Odor Consultant to provide staff with advice.

Councilmember Giordano inquired how long the activity reports would be seen by the Council. Mr. Wong reported the reports would go on for a while.

MOTION to note receipt and file progress report.

M/S: Gomez, Livengood.

Ayes: 4

Absent: 1 (Polanski)

ADJOURNMENT

There being no further Council business, Mayor Esteves adjourned the City Council meeting at 8:57 p.m. to 6:00 p.m., Tuesday, December 14, 2004.

Gail Blalock
City Clerk

The foregoing minutes were approved by the City Council as submitted on December 21, 2004.

Gail Blalock
City Clerk

Date

APPROVED MINUTES
CITY OF MILPITAS

Minutes:	Regular Meeting of Milpitas City Council (Including Joint Meeting with Redevelopment Agency)
Date of Meeting:	November 16, 2004
Time of Meeting:	6:00 p.m. (Closed Session) 7:00 p.m. (Regular Session)
Place of Meeting:	Milpitas City Hall, 455 E. Calaveras Boulevard

ROLL CALL

Mayor Esteves called to order the regular meeting of the Milpitas City Council at 6:00 p.m. Present were Mayor Esteves and Councilmembers Polanski and Gomez. Vice Mayor Dixon and Councilmember Livengood were not present for the Closed Session.

CLOSED SESSION

Mayor Esteves publicly stated the Council would convene in Closed Session to discuss the following items listed on the agenda:

1. Conference with Legal Counsel – Existing Litigation

(Pursuant to Government Code Section 54956.9(a))

Disalvo Claim: WCAB 79SJ68721 and 79SJ68722

2. Conference with Legal Counsel – Existing Litigation

(Pursuant to Government Code Section 54956.9(a))

Beck Claim: WCAB SJ85305 and SJ85307

3. Conference with Real Property Negotiator

(Pursuant to Government Code Section 54956.8)

Property: APN 086-05-009, 086-11-013 – (County Surplus Property - Elmwood/KB Site in the vicinity of Abel Street) Negotiating Parties: Redevelopment Agency, County of Santa Clara, KB Homes

Under Negotiation: Terms, Conditions, and Timing of Sale

4. Conference with Real Property Negotiator

(Pursuant to Government Code Section 54956.8)

Property: APN 022-08-043 (195 N Main Street - Zion Church)

Negotiating Parties: Redevelopment Agency, Coldwell Banker

Under Negotiation: Terms and Conditions of Sale

5. Conference with Real Property Negotiator

(Pursuant to Government Code Section 54956.8)

Property: APN 022-08-003 (Vacant property N. Main St., south of the SR 237 W/B off-ramp & Main)

Negotiating Parties: City of Milpitas/Milpitas Redevelopment Agency and Kathleen Cardoza

Under Negotiation: Terms and Conditions of Sale

6. Conference with Real Property Negotiator

(Pursuant to Government Code Section 54956.8)

Property: APN 022-08-041 and APN 022-08-042 (163 North Main St. – Smith/DeVries House)

Negotiating Parties: City of Milpitas/Milpitas Redevelopment Agency and Mid-Peninsula Housing Coalition, a California Non-Profit Public Benefit Corporation

Under Negotiation: Terms and Conditions of Sale

7. Conference with Real Property Negotiator

(Pursuant to Government Code Section 54956.8)

Property: APN 028-24-014 and 028-24-015 (94, 110 and 130 Winsor Avenue), and APN 028-24-020, and 028-24-026 (112 N. Main Street) in the vicinity of the new library site.

Negotiating Parties: City of Milpitas/Milpitas Redevelopment Agency and Robert Winsor, Milpitas Transmission, Mountain Air,

Under Negotiation: Terms and Conditions of Sale

8. Conference with Real Property Negotiator

(Pursuant to Government Code Section 54956.8)

Property: APN 028-24-025 (86 North Main Street)

Negotiating Parties: Milpitas Redevelopment Agency and Rodriguez Family Trust, and tenants

Under Negotiation: Terms and Conditions of Sale

9. Conference with Real Property Negotiator

(Pursuant to Government Code Section 54956.8)

Property: APN 028-24-17, portion of (198 Winsor Avenue)

Negotiating Parties: City of Milpitas/Milpitas Redevelopment Agency and Apton Properties LLC

Under Negotiation: Terms and Conditions of Sale

10. Conference with Legal Counsel – Anticipated Litigation

(Pursuant to Government Code Section 54956.9[c])

Initiation of Litigation – One Case

Mayor Esteves adjourned the meeting to closed session at 6:01 p.m.

The City Council meeting reconvened at 7:00 p.m. with Mayor Esteves presiding and Councilmembers Livengood, Polanski, and Gomez present. Vice Mayor Dixon was absent.

**CLOSED SESSION
ANNOUNCEMENTS**

There were no Closed Session announcements.

PLEDGE

Members of Troop No. 92 led the Council and audience in the pledge of allegiance.

MINUTES

MOTION to approve the City Council minutes of November 2, 2004, including joint meeting with the Redevelopment Agency, as submitted.

M/S: Gomez, Polanski.

Ayes: 4

Absent: 1 (Dixon)

SCHEDULE

Councilmember Polanski announced that Terrace Gardens would be holding a Special meeting on Thursday, November 18, 2004, at 7:00 p.m.

MOTION to approve the Schedule of Meetings as amended.

M/S: Gomez, Polanski.

Ayes: 4

Absent: 1 (Dixon)

PRESENTATIONS

Mayor Esteves presented the following Awards in connection with the City's Neighborhood Beautification Fifth Annual Recognition Award Program:

Robin Hays, winner in the Building a Sense of Community category;

John Kirkorian, winner in the Attractive Non-Residential category;

Judith Gottfeld, nominated in the Attractive Non-Residential category;

Mr. & Mrs. Martinez, winner in the Staff Choice Award category;

Kevin Broyles, Mr. & Mrs. Gill, Stephen Sullivan, Mrs. Schnepf, Vicki Holbert, and Mr. &

Mrs. Jorge Arreola, nominated in the Central Area Attractive Residential category;

Mr. & Mrs. Huang, winner in the Central Area Attractive Homeowners Association category;

Mr. & Mrs. Mujtaba, winner in the Hillside Area Attractive Residential;

Mr. & Mrs. Arikata, winner in the East Valley Floor Area Attractive Residential;

Mr. Hendershot, winner in the West Area Attractive Residential;

Juniel-Butler, winner in the West Area Attractive Homeowners Association; and

Mr. & Mrs. Santillan, nominated in the West Area Attractive Homeowners Association.

RECESS

Mayor Esteves recessed the City Council meeting at 7:22 p.m. for photo opportunities and refreshments. The City Council meeting reconvened at 7:38 p.m.

CITIZENS FORUM

Mayor Esteves invited members of the audience to address the Council on any subject not on the agenda, requesting that remarks, including any visual or technology-assisted presentations of any kind, be limited to two minutes or less.

Deepka Lalwani paid tribute to her friend and former Councilmember Barbara Lee stating that Barbara Lee believed in ethics in politics.

Joe and Pam Turner said they will be moving to Grants Pass, Oregon after living in Milpitas for 30 years and wanted to express their appreciation to the Council and the Milpitas community for the many opportunities they enjoyed while raising their family here. Mr. and Mrs. Turner said they were especially appreciative of the Redwood tree the City planted at Cardoza Park in October 2000 in memory of their daughter, Kelly. Mrs. Turner commented on how short life can be and emphasized the importance of doing and saying the things we want to, including saying I'm sorry. Mrs. Turner said she was a firm believer in "better late than never" and presented Councilmembers with thank-you notes she had written four years ago. Mayor Esteves thanked the Turners for their comments and said he would see that the notes would get to the former Councilmembers.

Rob Means commented that many people were surprised with the results of the recent Presidential election, especially since exit polls showed that John Kerry won the Presidential race, and read a press release from the Green Party supporting a recount campaign in Ohio.

Frank De Smidt announced two upcoming Chamber events – the "Good Morning Milpitas" Breakfast on Friday, November 19, 7:30 a.m., at the Embassy Suites, and the Grand Opening and ribbon cutting at the Nextel Store, near Starbuck's, on November 20 at 1:00 p.m.

ANNOUNCEMENTS

Mayor Esteves congratulated the North Valley Christian Fellowship on the opening of its church in Milpitas; thanked and congratulated the Elks of the Western Region of the USA for conducting a pre-conference in Milpitas; and congratulated the Milpitas Executive Lions Club for sponsoring and chartering a Club involving 30 high school students in community service.

Mayor Esteves read from a letter to the City from the Department of Housing and Community Development concerning the monitoring visit to Milpitas regarding the City of Milpitas' use of CDBG grant funds and congratulating the City for its outstanding job in implementing the public services program.

Mayor Esteves said he wanted to give the Council a pre-notice that he was requesting two items be placed on the December 21 Council agenda – a review of the two-minute time limit for speakers during Citizens Forum and a discussion of having an invocation before Council meetings.

Councilmember Livengood commented that in addition to the passing of former Councilwoman Barbara Lee, whose services would be held tomorrow at 11:00 a.m. at Mt. Olive Lutheran Church, and former Police Commander Greg Lawrence, whose services were held this morning, he just found out about the passing of former Commissioner Marge Schmitter and asked that the Council meeting be adjourned in memory of those three individuals and also former City employee Bob Oteri.

ANNOUNCEMENT OF CONFLICTS OF INTEREST

City Attorney Mattas asked the members of the Council to state on the record if anyone had a conflict of interest with any of the items on the agenda. Councilmember Livengood stated he would be abstaining on item RA7 regarding the Elmwood property because he had been employed by KB, who is building on that property, and KB had been a source of income to him in the last 12 months.

- MOMENTS OF REFLECTION** Mayor Esteves asked for comments from the Council on how the Council had practiced the Code of Ethics at the last Council meeting. There were no comments.
- AGENDA** MOTION to approve the agenda as submitted.
- M/S: Gomez, Livengood. Ayes: 4 Absent: 1 (Dixon)
- CONSENT CALENDAR** Mayor Esteves inquired if anyone wished to make any changes to the Consent Calendar. There were no requests.
- MOTION to approve the Consent Calendar, items with asterisks on the agenda, as submitted, in accordance with the staff recommendations.
- M/S: Gomez, Livengood. Ayes: 4 Absent: 1 (Dixon)
- * 3. Appointments** Approved the Mayor's appointments and reappointments as follows:
- Arts Commission
Reappointed Bill Foulk, Robin Hays, and Mareile Ogle to new three-year terms expiring October 2007.
- Bicycle Commission
Reappointed Miljon Buquing to a new two-year term expiring August 2006.
- Recycling & Source Reduction Commission
Reappointed Steve Ybarra to a new three-year term expiring October 2007.
- Sister Cities Commission
Reappointed Debra Garcia, Arlyn Swiger, and Linda Downey to new three-year terms expiring September 2007, and reappointed Roselda Mateo, Alternate No. 1, to a new two-year term expiring September 2006.
- Youth Commission
Reappointed Joseph Hall, Lindsey Munzel, and Justin Nguyen to new one-year terms expiring September 2005, and appointed Kumuda Rao to the Alternate No. 1 position with a term expiring September 2005.
- * 4. City Engineer Vacancy** Approved filling the City Engineer position.
- *5. City Calendar** Approved titling future City calendars "City of Milpitas Community Calendar."
- * 6. Summerfield Subdivision (Project No. 3043)** Adopted Resolution No. 7484 granting final acceptance and releasing the bond.
- * 7. Singley Area Rehabilitation, Phase II (Project No. 4200)** Adopted Resolution No. 7485 granting final acceptance and releasing the Contractors bond.
- * 8. Senior Nutrition Contract** Approved the contract and authorized payment to Bateman, Compass Group USA, Inc. for July 1, 2004, through June 30, 2005, not to exceed \$3.64 per meal, subject to approval as to form by the City Attorney. Sufficient funds have been approved in Recreation Services' FY 2004-2005 operating budget.
- * 9. Pro-Video Monitors Five Camera Digital Recording** Awarded the bid for the purchase and installation of 3 video monitors and a 5-camera video surveillance system at Fire Station One to the lowest qualified bidder, Northland Control Systems, Inc. in the amount of \$22,550.32, subject to approval as to form by the City

Surveillance System (Project No. 8109)	Attorney.
* 10. Great Mall Parkway/I-880 Capacity Improvements (Project No. 4178)	Awarded Construction Contract to Granite Rock in the amount of \$413,321, subject to approval as to form by the City Attorney.
* 11. Managed Health Network, Inc.	Authorized staff to enter into a contract for an Employee Assistance Program (EAP) with Managed Health Network (MHN) for the period January 1 through December 31, 2005, not to exceed \$33,537.60, subject to approval as to form by the City Attorney.
* 12. TY Lin International Traffic Engineering Support (Project No. 4189)	Authorized City Engineer to execute agreement amendment with TY Lin International at not-to-exceed amount of \$50,000, subject to approval as to form by the City Attorney.
* 13. Santa Clara Valley Urban Runoff Pollution Prevention	Approved and Authorized the City Manager to sign the first amendment to the Memorandum of Agreement for the Santa Clara Valley Urban Runoff Pollution Prevention Program.
* 14. Piedmont Road Bike Lane and Sidewalk Improvements (Project No. 4214)	Authorized the City Engineer to execute the Contract Change Order for Grade Tech, Inc. in the amount of not to exceed \$7,155.
* 15. Raines, Melton & Carella, Inc. Sewer Deficiency and Structural Correction Program (Project No. 6073)	Authorized the City Manager to execute the agreement amendment with Raines, Melton & Carella, Inc. in the amount of \$230,000, subject to approval as to form by the City Attorney.
* 16. Olivia Chen Consultants Gibraltar Reservoir and Pump Station	<ol style="list-style-type: none"> 1. Authorized the City Manager to execute the agreement amendment with Olivia Chen Consultants, in the amount of \$47,779, subject to approval as to form by the City Attorney. 2. Approved budget appropriation in the amount of \$55,000 from the Water Fund to Project No. 7101 Gibraltar Reservoir & Pump Station Improvements.
* 17. Motorola Astro Spectra Motorcycle Radios	Awarded the bid for the purchase of motorcycle radios to the lowest bidder, TelePath Corp, in the amount of \$ 32,880.94 including tax and shipping.
* 18. Public Safety Base Station Radio Equipment	Awarded the bid for the purchase of the two-way base radio equipment to the lowest bidder, TelePath Corp, in the amount of \$113,664.28 including tax and shipping.
* 19. Abel/Calaveras Right Turn Lane (Project No. 4186)	<ol style="list-style-type: none"> 1. Waived minor bid irregularity. 2. Awarded Construction Contract to O.C. Jones & Sons in the amount of \$674,992.00.
* 20. Dyett and Bhatia Midtown Transit Sub-Area	Authorized the City Manager to negotiate a contract with Dyett and Bhatia, Urban and Regional Planners, to conduct community visioning and prepare concept plans for the 364-acre area around the light rail and future Montague/Capitol BART stations, referred to as the Midtown Transit Sub-area, in an amount not to exceed \$103,070, subject to approval as to form by the City Attorney.

*** 21.**

Miscellaneous Vendors

Approved the following purchase requests

1. \$6,500.00 to Grade Tech, Inc., to install two undulators (speed bumps) and one asphalt concrete ramp and associated striping at the Community Center parking lot. Community Center staff requested for additional undulators along the front of the parking lot to slow down traffic and improve safety. The asphalt concrete ramp will be located between two disabled parking stalls to provide access up to the sidewalk. Grade Tech Inc. is successfully performing paving work for the City and staff considers the quote competitive and reasonable. (Funds are available from the Annual Street Resurfacing Project budget for this purchase.)
2. \$12,857.77 to Target Specialty Products for five mini-drums of Merit 75 WSP (water soluble packets) to be used for the annual fall soil drench for aphids. Pricing for this product is identical for each distributor due to manufacturer established agency pricing. Staff is recommending award to Target Specialty Products. (Funds are available from the Landscape Maintenance budget for this purchase.)
3. \$8,000.00 to Peninsula Pump for the emergency repair work at the Material Storm Pump Station. This work involved the removal, repair and reinstallation of a 77 HP pump and the replacement of seals, bearings and related parts. (Funds are available in the Utility Maintenance budget for this service)
4. \$27,330.00 to S & C Ford, Inc. for one Crown Victoria Police Interceptor. On September 9, 2004 Council approved an award for six Crown Victoria Police Interceptor vehicles to S & C Ford, Inc. as the low bidder. Recently, a 2001 Crown Victoria Police Interceptor was totaled in an auto accident and needs to be replaced. S & C Ford, Inc. has agreed to offer the same price as quoted on their bid for the six vehicles submitted on August 17, 2004. (Sufficient funding has been allocated in the Equipment Replacement Fund for the purchase of this patrol vehicle.)

PUBLIC HEARINGS

1.

**Solid Waste Franchise
Extension**

Principal Civil Engineer Darryl Wong reported that a contract had been negotiated with BFI for Solid Waste Services, introduced members of the BFI negotiating team and the City's financial consultants who assisted in the negotiations, and recognized members of the City staff who had participated in the negotiations.

Mr. Wong further reported there had been a previous Council approval that led to the negotiations, which was free street sweeping services through December 2008 valued in excess of \$900,000, in consideration of negotiation of a 10-year extension; two contracts had been negotiated: Collection and Disposal of Solid Waste, which included a 10-year extension to December 2017, and Residential Yard Trimmings Collection and Processing Services; and the last residential increase had been four years ago, which resulted in a zero increase for residential.

Mr. Wong, addressing new services, stated the new collection services would include the comingling of recyclables; all recyclables would be placed in one container and sorted by BFI at its facility; the program would take awhile to implement as new equipment would have to be purchased and an outreach program for residents would be done; and January 2006 was being targeted for the start of the combined recycling.

Mr. Wong further stated that ten Neighborhood Cleanups per year were included for residential areas throughout the City; these would take place on a Saturday and BFI would put out a bin for residents to use, as well as recycle bins; and there would also be free bulk service pick up for the City's senior citizens.

Councilmember Gomez, addressing Neighborhood Cleanups, inquired how many households each Neighborhood Cleanup would serve. Mr. Wong responded there were roughly 15,000

households within the community and it would be divided as equally as possible. Councilmember Gomez inquired if that included mobile home parks and apartments. Mr. Wong said it was set up for all residential households.

Mayor Esteves inquired if big items would be allowed. Mr. Wong said big and bulky items would be accepted and there would be a large recycle container also provided.

Councilmember Polanski, addressing single stream recycling where recyclables could be combined, inquired if the delay to 2006 was due to the educational process or because of the equipment needed. Mr. Wong said it was due to the equipment that would be purchased. Councilmember Polanski inquired if the residents would still use the three individual bins in the meantime. Mr. Wong confirmed that would be the case through 2005. Councilmember Polanski, referring to the wheel cart with the single stream recycling, inquired if residents would be charged a cart rental fee. Mr. Wong said there would not be an extra charge.

Mr. Wong pointed out that two bulk service pick-ups per year had been negotiated free for senior citizens. Councilmember Polanski inquired what the senior citizen age bracket would be. Mr. Wong said he didn't recall and staff would check on the age requirement and get back with the information.

Mayor Esteves inquired if any senior could call regardless of where they lived within the City. Mr. Wong clarified, in response to Councilmember Polanski's earlier question, that a senior citizen was one who was an occupant of a single dwelling unit, 62 years of age or older, and responsible for paying the water bill of the dwelling.

Mr. Wong reviewed program upgrades and reported that ordinance revisions would include push-and-return service due to the problem of bins being left out in the open; staff was proposing that in addition to the current citation process, after a second citation was issued, the City would require the customer to use mandatory services from BFI at some cost; and new late payment fees would also be included.

Mr. Wong outlined the proposed monthly rate increases. Councilmember Polanski inquired why the increases for three-years in a row and then every other year. Mr. Wong explained that the increases proposed for the next three years was for this one time only; the new program for single stream recycling would take approximately a three-year period and once customers were on that service, staff was proposing to come back to the Council with a contract revision, if needed.

Councilmember Gomez, addressing the comparison to other cities with 64-gallon services, asked if by entering into the 10-year agreement, would Milpitas be able to address the rates in the future if rates go down significantly. Mr. Wong responded staff looked at the diversion goals and level of services being provided to customers; there were advantages to what was referred to as volume based; and going to a volume based system would require a change in equipment with less people needed for collection.

Councilmember Polanski, referring to page 15 of the actual agreement, inquired why there was a reference to SBC, felt it was a conflict with pages 11 and 12, and the implication was that the city of San Jose was putting out a telephone directory. Mr. Wong agreed that the wording should be changed.

Councilmember Polanski commented that she had heard from a manager of BFI that they were going to be very pleased when this franchise was approved because the Police Department would then back off from harassing the BFI drivers. Councilmember Polanski asked if that meant BFI drivers were being harassed. Mr. Wong said he had no knowledge of drivers being harassed.

Mayor Esteves opened the public hearing and invited comments.

Isaac Hughes expressed his concern that an ordinance was going to be adopted that would place a fine on recipients of BFI services regarding their lack of conformance in placing dumpsters/containers back where they belong; he had a problem with that because the citizens already paid fees for BFI to perform the service; expressed concern that the City has a service that was supposed to be provided by BFI with much larger containers on commercial properties called dumpsters, which were left out on public sidewalks and parking lots; and he felt it was a breach of agreement in that BFI had agreed it would not go in shopping centers when customers were present but he had seen them at 11:00 a.m. on Barber Lane leaving containers outside the bin area in plain view of City streets where people can see them everyday; and Mr. Hughes said until BFI is fined according to the contract, don't pick on the people.

MOTION to close the public hearing.

M/S: Gomez, Polanski.

Ayes: 4

Absent: 1 (Dixon)

Councilmember Livengood said he was concerned about the issue relating to garbage containers being left in public view and inquired if that was what was being referred to in the "push-and-return service." Mr. Wong explained there were customers who left bins in public view; these customers had the option to contract with BFI for services to place the bin back or the option of moving the bin out themselves where BFI could pick it up; in some cases the customer moved the bins out and left them in public view; it was a chronic situation and the City Ordinance required that the bins not be visible from the street. Councilmember Livengood inquired what staff had done regarding educating the customers. Mr. Wong said the enforcement people worked with the business owners; in some cases it was complaint generated and in other cases staff has noted the problem within the shopping complexes; what was being referred to were the big bins sitting outside shopping complexes, not the small residential containers. Councilmember Livengood expressed concern that businesses not be cited when the bins were in view just after a BFI pickup. Mr. Wong explained there was a 12-hour window leeway before and after collection times. Councilmember Livengood inquired what type of citation was proposed for the business owner who passed the 12-hour window. Mr. Wong stated the Ordinance had a citation schedule; the first citation was \$50 and the second citation was \$100; there was also an appeal process; if it was a chronic situation, staff would like to have the ability to require the "push and return" be provided by BFI as part of its services. Councilmember Livengood stated he would not support the "push and return" ordinance revision.

City Attorney Mattas explained the mandatory "push and return" would only be possible after the business had been cited two times. City Manager Wilson added that staff had found that some operators had abandoned their enclosures and consistently used the enclosures for other things (i.e., storing pallets); and those were the ones being addressed with this approach.

Councilmember Gomez, addressing the ability to cite, inquired if staff was only requesting the ability to require the business owner to use the BFI push-and-return services. Mr. Wong responded that was the case. Councilmember Gomez inquired as to how problematic the situation was. Mr. Wong said the intent was to use the requirement as a discouragement; it was being requested for use as an enforcement tool.

Mayor Esteves inquired if the City had the resources to implement a push-and-return policy throughout the City fairly. Mr. Wong said the City had a Task Force that reviews different complexes throughout the City, and it was known where the problem areas were; there was the ability to enforce it, however, the proper tools were needed.

Councilmember Polanski commented this should be fair for those who have bins in shopping centers or other places but should also protect the citizens for health and safety; suggested maybe there should be more than two citations; and felt it would be an incentive to have a daily penalty charge for a period of time. Mr. Wong said staff did work with customers prior to a citation being issued.

Councilmember Gomez inquired, under the proposed ordinance, how long would those being brought into the mandatory push and pull be required to stay on the program. Mr. Wong explained that it would be a one-year period.

Councilmember Livengood inquired what was the monthly increase in cost to the business owner if required to go to the mandatory push-and-pull service. Mr. Wong explained it would range depending on the distance moved, size of the container, and the frequency; the least expensive was \$7.43 a month for a small bin (25 feet) and went up to \$355 for a larger container moved 200 feet six times a week.

Mayor Esteves commented that it seemed like the push-and-pull requirement could be bifurcated.

Mr. Wong read the title of Ordinance No. 48.16 amending Sections 3.30, 3.31, 4.20, 7.20, and 9.91, Chapter 200, Title V of the Milpitas Municipal Code relating to Solid Waste Services.

MOTION to waive the reading beyond the title.

M/S: Gomez, Polanski. Ayes: 4 Absent: 1 (Dixon)

MOTION to:

1. Introduce Ordinance No. 48.16, setting Solid Waste program provisions;
2. Adopt Resolution No. 7483 setting new Solid Waste rates; and
3. Authorize the City Manager to execute the revisions to the agreements, subject to City Attorney approval as to form.

M/S: Gomez, Polanski. Ayes: 4 Absent: 1 (Dixon)

City Manager Wilson thanked the City team and the very solid effort by BFI and everyone who participated to make this work.

2.
Ordinance No. 38.766
Tutoring Centers in HS District
(Introduce)

Acting Planning/Neighborhood Services Director Tambri Heyden reviewed the proposed ordinance that would add Tutoring Centers as conditional uses in the Highway Service (HS) District. Ms. Heyden explained that this would allow staff and the Planning Commission to review the application and address any concerns with parking and hours of operation that may conflict with other businesses in the area. Ms. Heyden said the Planning Commission held a public hearing on October 27, 2004, and recommended approval to the City Council.

Mayor Esteves opened the public hearing and invited comments. There were none.

MOTION to close the public hearing.

M/S: Gomez, Livengood. Ayes: 4 Absent: 1 (Dixon)

Ms. Heyden read the title of Ordinance No. 38.766 amending Chapter 10, Title XI of the Milpitas Municipal Code to add Tutoring Centers in the Highway Services District.

MOTION to waive the reading beyond the title and introduce Ordinance No. 38.766.

M/S: Gomez, Polanski.

Ayes: 4

Absent: 1 (Dixon)

JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. CALL TO ORDER

Mayor Esteves called to order the regular meeting of the Milpitas Redevelopment Agency, meeting jointly with the City Council, at 8:48 p.m.

RA2. ROLL CALL

Present were Mayor Esteves and Agency/Councilmembers Livengood, Polanski and Gomez. Agency Member/Vice Mayor Dixon was absent.

RA3. MINUTES

MOTION to approve the Redevelopment Agency minutes of November 2, 2004, including joint meeting with the City Council, as submitted.

M/S: Gomez, Polanski.

Ayes: 4

Absent: 1 (Dixon)

RA4. AGENDA

MOTION to approve the agenda and consent calendar as submitted.

M/S: Gomez, Polanski.

Ayes: 4

Absent: 1 (Dixon)

RA5. ACCEPTANCE OF COMPREHENSIVE ANNUAL FINANCIAL REPORTS FY ENDED JUNE 30, 2004

Finance Director Emma Karlen reported before the Council was acceptance of the City's 2003-2004 audited financial reports that included the Comprehensive Annual Financial Report (CASFR), the Milpitas Redevelopment Agency Component Unit Financial Statements, the Milpitas Public Financing Authority Component Unit Financial Statements, the Single Audit Report, the Bicycle/Pedestrian Projects Financial Statements, the agreed upon Procedures Report on Compliance with the Appropriations Limit Increment, and the Memorandum on Internal Control Structure. Ms. Karlen reported that all reports received the auditors' unqualified opinion.

Ms. Karlen reviewed Fiscal Year 2003-2004 General Fund Revenue (budget vs. actual), General Fund expenditure highlights, General Fund reserve status, General Fund unreserved, undesignated fund balance, Redevelopment Revenue compared to FY 2002-2003, and Redevelopment Fund balances as of June 30, 2004.

City Manager Thomas Wilson summarized that what the Council saw was the General Fund operating and Redevelopment Agency budgets, and he thought it was incredibly noteworthy in the General Fund area the savings once again that had been accomplished by the organization by spending almost five percent less than budgeted; this was due to the great leadership and participation by all staff at all levels and brought in almost \$3 million in savings on the expenditure side. Mr. Wilson further commented that the effort that continues in relation to that savings makes this report the third year where we have significantly under spent the General Fund while meeting all our commitments. Mr. Wilson said the Redevelopment Agency also showed a very positive balance sheet and the results of the restructuring will bring a substantial number of improvements in the next two to three years because most of the properties are not developed; he thought we will begin to see the start of those tax increments in 2005-2006 and it appeared the bottom of the revenue decline had probably been reached.

MOTION to note receipt and file.

M/S: Livengood, Polanski.

Ayes: 4

Absent: 1 (Dixon)

RA6. 1st QUARTER FINANCIAL STATUS REPORT

Finance Director Karlen presented an overview of the General Fund financial status report for the period ended September 30, 2004, reporting that about \$5.8 million in revenues had been received (14.3% of the budget). Ms. Karlen noted that this was the first quarter in about three years the General Fund revenue showed an increase instead of a decrease.

Agency/Councilmember Livengood commented that the only two items that seemed to be a red flag were the Fire budget (at 30%) and the Human Resources budget (reaching 35%) after three months and requested an explanation. Ms. Karlen responded the Fire budget included the purchase of a fire engine, which was a one-time expense, and Human Resources had to pay the Workers Compensation premium at the beginning of the year, which was also a one-time expense.

MOTION to note receipt and file.

M/S: Gomez, Polanski.

Ayes: 4

Absent: 1 (Dixon)

**RA7.
SPECIAL MEETING
ELMWOOD PROJECT**

City Manager Wilson reported staff was requesting a Special Meeting of the Agency/Council be scheduled to conduct a public hearing to consider approval of the Elmwood commercial and residential development project; the agenda proposed December 9, 2004, however, staff was now proposing a change to December 14, 2004.

MOTION to schedule a Special Meeting of the Council and Redevelopment Agency on Tuesday, December 14, 2004, to conduct a public hearing and consider approval of the Elmwood commercial and residential development project.

M/S: Polanski, Gomez.

Ayes: 4

Absent: 1 (Dixon)

**RA8.
RDA ADJOURNMENT**

There being no further Redevelopment Agency business, Mayor Esteves adjourned the Redevelopment Agency meeting at 9:09 p.m.

**COUNCIL
ADJOURNMENT**

There being no further Council business, Mayor Esteves adjourned the City Council meeting at 9:09 p.m. in memory and honor of former Councilwoman Barbara Lee, former Police Commander Greg Lawrence, former Commissioner Marge Schmitter, and former City Planner Bob Oteri.

Gail Blalock
City Clerk

**The foregoing minutes were approved by the City Council as submitted on
December 7, 2004.**

Gail Blalock
City Clerk

Date

APPROVED MINUTES
CITY OF MILPITAS

Minutes:	Regular Meeting of Milpitas City Council (Including Joint Meeting with Redevelopment Agency)
Date of Meeting:	November 2, 2004
Time of Meeting:	6:00 p.m. (Closed Session) 7:00 p.m. (Regular Session)
Place of Meeting:	Milpitas City Hall, 455 E. Calaveras Boulevard

ROLL CALL

Mayor Esteves called to order the regular meeting and special meeting of the Milpitas City Council at 6:00 p.m. Present were Mayor Esteves, Vice Mayor Dixon, and Councilmembers Polanski and Gomez (arrived 6:05 p.m.). Councilmember Livengood was not present for the Closed Session. .

CLOSED SESSION

Mayor Esteves publicly stated the Council would convene in Closed Session to discuss the following items listed on the regular agenda and special meeting agenda:

- 1. Conference with Legal Counsel: Existing Litigation**
(Pursuant to Government Code Section 54956.9(a))
Milpitas v. Turner Construction et al., Santa Clara County Superior
Court case number CV814946, consolidated with case number 103 CV 008400
- 2. Conference with Real Property Negotiator**
(Pursuant to Government Code Section 54956.8)
Property: Vacant Property N. Main St., south of SR237 W/B off-ramp & Main (APN 022-08-003)
Negotiating Parties: City of Milpitas/Milpitas Redevelopment Agency and Kathleen Cardoza
Agency Negotiators: Thomas J. Wilson and Blair King
Under Negotiation: Terms and conditions for acquisition of property
- 3. Conference with Real Property Negotiator**
(Pursuant to Government Code Section 54956.8)
Property: 163 North Main Street, APN #022-08-041 and APN #022-08-042
Negotiating Parties: Mid-Peninsula Housing Coalition, a California Non-Profit Public Benefit Corporation, City of Milpitas, and Milpitas Redevelopment Agency
Agency Negotiators: Thomas J. Wilson and Blair King
Under Negotiation: Terms and conditions for disposition or lease
- 4. Conference with Real Property Negotiator**
(Pursuant to Government Code Section 54956.8)
Property: Several industrial buildings at 450 S. Abbott Avenue (APN 086-06-011)
Negotiating Parties: City of Milpitas/Milpitas Redevelopment Agency and Menlo Equities
Agency Negotiators: Thomas J. Wilson and Blair King
Under Negotiation: Terms and conditions for acquisition of lease

Mayor Esteves adjourned the meeting to closed session at 6:01 p.m.

The City Council meeting reconvened at 7:00 p.m. with Mayor Esteves presiding and Vice Mayor Dixon and Councilmembers Livengood, Polanski, and Gomez present.

CLOSED SESSION ANNOUNCEMENTS

City Attorney Steve Mattas announced with respect to the item on the special meeting agenda, direction was provided; with respect to the regular meeting agenda, the Council voted 4/0, with Councilmember Livengood absent, to further discussions related to the development and potential acquisition of the property.

PLEDGE

Members of Troop No. 92 led the Council and audience in the pledge of allegiance.

MINUTES

MOTION to approve the City Council minutes of October 19, 2004, including joint meeting with the Redevelopment Agency, as submitted.

M/S: Polanski, Gomez Ayes: 4 Absent: 1 (Livengood)

SCHEDULE

MOTION to approve the Schedule of Meetings as submitted.

M/S: Gomez, Polanski. Ayes: 4 Absent: 1 (Livengood)

PRESENTATIONS

Mayor Esteves read a proclamation proclaiming November 14-20, 2004, as “Hunger and Homeless Awareness Week,” and presented it to Barry Del Buono, Executive Director of Emergency Housing Consortium. Mr. Del Buono thanked the Mayor and Council and said the Emergency Housing Consortium was pleased to continue to be a partner with Milpitas in helping people in need.

Mayor Esteves read a proclamation proclaiming November 11, 2004, as “Veterans’ Day” and highlighting the ceremony on Thursday, November 11, at 9:00 a.m. at Veterans Memorial Park in the Civic Center Plaza, and presented it to Arthur Ebright. Mr. Ebright said as a 23-year veteran of the U.S. Navy, he was proud to accept the proclamation on behalf of all veterans past and present and particular for those who paid the ultimate price.

Mayor Esteves read a proclamation proclaiming November 15, 2004, as “America Recycles Day” in Milpitas and presented it to Leslie Stobbe of the City’s Utilities Engineering Section. Ms. Stobbe said recycling was something everyone could do and announced that residents would soon be receiving a mailer on recycling that would include an opportunity to enter into a national drawing for prizes and encouraged everyone to conserve natural resources and invest in the future by recycling.

CITIZENS FORUM

Mayor Esteves invited members of the audience to address the Council on any subject not on the agenda, requesting that remarks, including any visual or technology-assisted presentations of any kind, be limited to two minutes or less.

Rob Means commented that we have all seen the corrupting influence of special interest money at the National level and have also seen the special interest money flood to the local Milpitas election. Mr. Means said it was obvious to him that the police and firefighter coalition was looking to get people on the Council that will help them get more money or benefits as some kind of payoff in negotiations next year; he thought this was an opportunity to address how much the police officers are of the entire Police Department budget; a lot of citizens were questioning the integrity of the police over this and were upset about how they've gone in and abused their position and integrity in the community to slam people undeservedly; he saw this as an opportunity that normally doesn't come up because citizens don't want to go up against them because they are intimidated; but he saw it as a good opportunity to cut their budget and we ought to grab it.

ANNOUNCEMENTS

Vice Mayor Dixon requested the Mayor adjourn tonight's meeting in memory of the passing of two individuals, Ronald Won, who with his wife Betty, were senior volunteers with the Police Department, and Marge Schmitter, a former commissioner who has been ill for several years. Mayor Esteves said he would honor the request.

Mayor Esteves said he has the opportunity to be part of the opening of three businesses in Milpitas: The Patelco Credit Union on Montague; Universal Marketing Group at Minnis Circle; and the Creative Learning Center for young children.

**ANNOUNCEMENT OF
CONFLICTS OF INTEREST**

City Attorney Mattas asked the members of the Council to state on the record if anyone had a conflict of interest with any of the items on the agenda. There were none.

MOMENTS OF REFLECTION

Mayor Esteves asked for comments from the Council on how the Council had practiced the Code of Ethics at the last Council meeting.

Vice Mayor Dixon commented that Milpitas had been dumped on quite a bit, particularly by the San Jose Mercury News, but she thought and believed that the community has always deserved the best; it is one of the best and most diverse communities where people care and she felt sorry for the people in the community who have had to endure what has happened. Vice Mayor Dixon said the Community Advisory Commission would have a lot of work to do to dissect what happened in this election.

Councilmember Polanski said it was sad for her, with the community celebrating its 50th anniversary as a city, to see campaigns come down to this, and it was very disillusioning to her; the CAC will be having a meeting on November 30 at 7:00 p.m. to reflect on the election; thanked all the candidates who came to the Final Word Forum the past Saturday; she thought the League of Women Voters did a good job; she thought it was a great first step for the Ethics First Program; and commended Mayor Esteves, Vice Mayor Dixon, and Ed Connor who did run ethical campaigns on the issues and what they wanted to do.

Mayor Esteves said he hoped everyone continued to be more conscious of ethics and that there would be more educational programs.

AGENDA

MOTION to approve the agenda as submitted.

M/S: Dixon, Gomez.

Ayes: 4

Absent: 1 (Livengood)

CONSENT CALENDAR

Mayor Esteves inquired if anyone wished to make any changes to the Consent Calendar. There were no requests.

MOTION to approve the Consent Calendar, items with asterisks on the agenda, as submitted, in accordance with the staff recommendations.

M/S: Dixon, Polanski.

Ayes: 4

Absent: 1 (Livengood)

***1.**

**Odor Control Comprehensive
Action Plan Update**

Noted receipt and filed progress report.

***2.**

**Executive Secretary to the City
Manager Position**

Approved filling the Executive Secretary to the City Manager position; and the resulting vacancy if filled through an internal promotion.

***3.**

**Fremont-Milpitas Project
(Project No. 4219)**

Adopted Resolution No. 7482 granting partial initial acceptance of the Silicon Valley Intelligent Transportation System (ITS) Fremont-Milpitas Project, (Project No. 4219), subject to a one-year warranty period and reduction of the faithful performance bond to \$150,260.73.

***4.**

**Cost Share Agreement
(Project No. 4206)**

Authorized the City Manager to execute a cost share agreement with Santa Clara Valley Water District for Coyote Creek Trail, Reach 1 (Project No. 4206), subject to approval as to form by the City Attorney.

- *5. Abel/Calaveras Right Turn Lane (Project No. 4186)** Authorized the City Engineer to execute Authorization Letter with Pacific Gas & Electric Company for Abel/Calaveras Right Turn Lane Project (Project No. 4186), in the amount of \$13,639.60, subject to approval as to form by the City Attorney.
- *6. GSS Consulting (Various CIP Projects)** Authorized the City Manager to execute the agreement amendment with GSS Consulting for various CIP Projects in the amount not to exceed \$65,900, subject to approval as to form by the City Attorney.
- *7. Montague Widening Project (Project No. 4719)** Authorized the City Manager to execute the agreement amendment with HMH Engineers for Montague Widening Project (Project No. 4719), in the amount of \$116,010, subject to approval as to form by the City Attorney.
- *8. Athletic Court Rehabilitation (Project No. 5069)** Approved plans and specifications, and authorized advertising for bid proposals.
- *9. Miscellaneous Vendors** Approved the following purchase requests and budget change form:
1. \$ 9,420.00 to Golden Bay Fence plus Iron Works Inc., to replace a portion of a fence enclosure in the vicinity of 1800 McCarthy Blvd. The fence enclosure was damaged by a vehicle driven by a private party driving at excess speed that swerved off the roadway. Four fence contractors were invited to bid and one bid was received from Golden Bay Fence plus Iron Works Inc. (Funds are available from the Landscape Maintenance operating budget for this purchase.)
 2. \$ 12,981.34 to L.C. Action Police Supply to purchase eight Federal Signal Arjent LED light bars for the new police vehicles. Three bids were received ranging from \$17,199.92 to the low bid of \$ 12,981.34 received from L.C. Action Police Supply. (Funds are available from the Fleet Maintenance operating budget for this purchase.)
 3. \$ 8,504.05 to HazCon to furnish and install several pump and plumbing upgrades to the fuel storage tanks at Fire Station # 1. These upgrades include installing submersible turbine pumps, remote suction pumps, new piping from pump to the fuel dispenser and a smart controller. These enhancements will reduce potential vapor system and vapor lock problems and improve fuel flow rate. (Funds are available from the Equipment Replacement Fund for this purchase.)
 4. \$ 11,000.00 to Peterson Tractor for the emergency repair and replacement of several major component parts on the diesel engine at the Gibraltar Pump Station. (Funds are available from the Utility Maintenance operating budget for this service.)
 5. \$ 7,500.00 to Frank Electric Co. for the emergency replacement of a burned out meter main and several component parts at the Milpitas Materials Storm Pump Station. (Funds are available from Utility Maintenance operating budget for this service.)
 6. \$ 5,000 to HDL Companies for the business license SQL version software upgrade. (Funds are available in the Finance System Capital Improvement Project budget for this purchase.)
 7. \$ 72,600.00 to Koffler Electrical for the emergency removal, repair and replacement of motor and pump assemblies and related parts at the Main Lift Pump Station. (Additional budget appropriation is needed from the Sewer Fund for this service.)

PUBLIC HEARINGS

There were no public hearings.

JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

**RA1.
CALL TO ORDER** Mayor Esteves called to order the regular meeting of the Milpitas Redevelopment Agency, meeting jointly with the City Council, at 7:23 p.m.

**RA2.
ROLL CALL** Present were Mayor Esteves, Vice Mayor Dixon, and Agency/Councilmembers Polanski and Gomez. Agency/Councilmember Livengood was absent.

**RA3.
MINUTES** MOTION to approve the Redevelopment Agency minutes of October 19, 2004, including joint meeting with the City Council, as submitted.

M/S: Gomez, Polanski. Ayes: 4 Absent: 1 (Livengood)

**RA4.
AGENDA** MOTION to approve the agenda and consent calendar as submitted.

M/S: Gomez, Polanski. Ayes: 4 Absent: 1 (Livengood)

**RA5.
LIBRARY DESIGN
(PROJECT No. 8162)** Capital Improvement Program Manager Mark Rogge presented a progress report on the Library Project, which included an introduction of the Concept Design Phase. Using a PowerPoint presentation, Mr. Rogge reviewed the Library Design Schedule and the expenditures to date, noting that expenses were right on budget. Mr. Rogge reported that Group 4 Architects had been working on a conceptual design that incorporated all of the information from the Building Plan and showed slides of the Building Program Diagrams for the first and second floors along with slides of conceptual design site diagrams. Mr. Rogge further reported the parking garage would be three stories and would accommodate 300 parking spaces and incorporated into the concept design were lots of opportunities for the architects to do wonderful work. Mr. Rogge commented that Group 4 has worked on this plan and addressed each of the issues in the Building Plan; City staff, library staff, and the Library Subcommittee had reviewed it.

Mr. Rogge introduced Dawn Merkes and Wayne Gehrke of Group 4, who were present to answer questions.

Agency/Councilmember Polanski inquired about the drive-up book drop-off. Mr. Rogge said the design was being developed and both driver and passenger drop-offs were being pursued. Agency/Councilmember Polanski recommended a driver's side drop-off as being preferred and said she was very pleased with the design concept.

Mayor Esteves said this was presented to the Library Subcommittee and asked for clarification about places for art projects. Mr. Rogge said places for flat art had been identified and there were other opportunities as well.

Vice Mayor Dixon expressed concern for the size of the space for the Friends of the Library and inquired if it had been cleared with them. Mr. Rogge pointed out that there were two spaces for the Friends, and it had been reviewed with them. Vice Mayor Dixon suggested a permanent marker be placed on the building to identify the historic portion of the building.

MOTION to note receipt and file the Library Design Progress Report.

M/S: Gomez, Polanski.

Wayne Gehrke, Group 4, commented that this project presented some wonderful opportunities for Group 4 to create a remarkable piece of architecture the community would be proud of. Mr. Gehrke thanked the Council for the opportunity and said he looked forward to working with the Council in the future.

Mayor Esteves noted that a vote wasn't needed.

***RA6.
INVESTMENT PORTFOLIO**

Noted receipt and filed the investment report for the quarter ended September 30, 2004.

***RA7.
163 N. MAIN STREET
(APN 022-08-041)**

Adopted Joint Resolution Nos. RA232/7481 of the Council of the City of Milpitas and the Milpitas Redevelopment Agency Authorizing an extension of the Exclusive Negotiation Agreement with Mid-Peninsula Housing Coalition until February 28, 2005, for the sale and development of APN 022-08-041 (163 North Main Street).

***RA8.
KB HOMES & SENIOR
AFFORDABLE HOUSING
PROJECT**

Authorized an Agreement for Legal Services with Kane, Ballmer & Berkman to draft two Disposition and Development Agreements for the KB Development and Senior Affordable Housing Project and provide general assistance with a third Disposition and Development Agreement for the County Health Center with expenditures not to exceed \$25,000.

***RA9.
GTE MOBILENET OF
CALIFORNIA**

Authorized the City Manager, as the Executive Director of the Milpitas Redevelopment Agency, to execute a lease agreement with GTE Mobilenet of California for the location of a cellular communications site at the Milpitas Sports Center, subject to approval as to form by the City Attorney.

**RA10.
ADJOURNMENT**

There being no further Redevelopment Agency business, Mayor Esteves adjourned the Redevelopment Agency meeting at 7:46 p.m.

The City Council meeting continued.

ADJOURNMENT

There being no further Council business, Mayor Esteves adjourned the City Council meeting at 7:46 p.m. in memory of Ronald Won and Marge Schmitter.

Gail Blalock
City Clerk

**The foregoing minutes were approved by the City Council as submitted on
November 16, 2004.**

Gail Blalock

Date

APPROVED MINUTES
CITY OF MILPITAS

Minutes:	Regular Meeting of Milpitas City Council (Including Joint Meeting with Redevelopment Agency)
Date of Meeting:	October 19, 2004
Time of Meeting:	6:00 p.m. (Closed Session) 7:00 p.m. (Regular Session)
Place of Meeting:	Milpitas City Hall, 455 E. Calaveras Boulevard

ROLL CALL

Mayor Esteves called to order the regular meeting of the Milpitas City Council at 6:00 p.m. Present were Mayor Esteves, Vice Mayor Dixon, and Councilmember Polanski. Councilmembers Livengood and Gomez were not present for the Closed Session.

CLOSED SESSION

Mayor Esteves publicly stated the Council would convene in Closed Session to discuss the following items listed on the agenda.

1. Conference with Real Property Negotiator

(Pursuant to Government Code Section 54956.8)

Property: Vacant Property N. Main St., south of SR237 W/B off-ramp & Main (APN 022-08-003)

Negotiating Parties: City of Milpitas/Milpitas Redevelopment Agency and Kathleen Cardoza

Agency Negotiators: Thomas J. Wilson and Blair King

Under Negotiation: Terms and conditions for acquisition of property

2. Conference with Real Property Negotiator

(Pursuant to Government Code Section 54956.8)

Property: 163 North Main Street, APN #022-08-041

Negotiating Parties: Mid-Peninsula Housing Coalition, a California Non-Profit Public Benefit Corporation, City of Milpitas, and Milpitas Redevelopment Agency

Agency Negotiators: Thomas J. Wilson and Blair King

Under Negotiation: Terms and conditions for disposition or lease

Mayor Esteves adjourned the meeting to Closed Session at 6:01 p.m.

The City Council meeting reconvened at 7:00 p.m. with Mayor Esteves presiding and Vice Mayor Dixon and Councilmembers Livengood, Polanski, and Gomez present.

**CLOSED SESSION
ANNOUNCEMENTS**

There were no closed session announcements.

PLEDGE

Members of Troop No. 92 led the Council and audience in the pledge of allegiance.

MINUTES

MOTION to approve the City Council minutes of September 21, 2004, October 5, 2004, October 6, 2004, & October 12, 2004, including joint meetings with the Redevelopment Agency, as submitted.

M/S: Dixon, Livengood.

Ayes: 5

SCHEDULE

Vice Mayor Dixon inquired if the upcoming Chamber Board meeting was at 7:30 a.m. in lieu of 11:00 a.m. Milpitas Chamber of Commerce Board Member Frank De Smidt stated the Board was meeting in the morning.

Councilmember Polanski announced that the 50th Anniversary Committee would be meeting Thursday, October 21, 2004, at 7:00 p.m. in the 4th Floor Conference Room.

MOTION to approve the Schedule of Meetings as amended.

M/S: Livengood, Polanski.

Ayes: 5

PRESENTATIONS

Mayor Esteves read a proclamation proclaiming October 15-17, 2004, as “Help the Mentally Disabled People Days” and presented Frank De Smidt representing the Milpitas Knights of Columbus Council No. 5796 and St. Elizabeth’s Council No. 8747.

Mr. De Smidt said the Knights of Columbus collected money every year, which goes to Milpitas High School Special Ed class; and Council No. 5796 would be holding a dinner/dance on Saturday, October 23, 2004, as its fund raiser.

Mayor Esteves read a commendation for the 2004 “Relay for Life” sponsored by the American Cancer Society and presented it to the 2004 Chair Lorraine Hepworth. Ms. Hepworth, on behalf of the American Cancer Society and the Relay committee members, thanked the Council and the Milpitas Firefighters and Police, Recreation staff, the Board of Education, the MUSD, and everyone for their support and help in making it a successful event; over \$118,000 had been raised this year; explained the functions of the American Cancer Society; and presented a plaque on behalf of the American Cancer Society to the Council and the City of Milpitas.

Cynthia York, Director of the Health Trust of Santa Clara County Community Wellness Program, outlined the functions of the Health Trust in the Community and provided an update on the flu vaccine situation. Ms. York stated that only those who fell into a high risk category would be given the vaccine due to the shortage; shared a newsletter from the Health Trust that contained an insert listing those who fell into the high risk category along with information as to where the most updated vaccine information could be found; and explained that proceeds from the Flu Shot Program went to services such as Meals on Wheels, Family Health Insurance Programs, and Case Management for those people living with HIV/AIDS.

CITIZENS FORUM

Mayor Esteves invited members of the audience to address the Council on any subject not on the agenda, requesting that remarks, including any visual or technology-assisted presentations of any kind, be limited to two minutes or less.

Joselito Abelardo, Community Advisory Commissioner and a member of the Steering Committee for the Milpitas Ethics First Program, reported on how the Ethics First Program was going, stating that residents were responding well to the information; the Ethics First Brochure was distributed to all Milpitas households on October 1, 2004, inside the City’s newsletter; the Ethics First Public Service Announcement was regularly playing throughout the day on Milpitas Cable 15, and residents were visiting the Ethics First web site. Mr. Abelardo further stated that the League of Woman Voters would be holding a “Final Word Forum” on Saturday, October 30, 2004, beginning at 4:00 p.m. in the Council Chambers and invited everyone to attend.

Terry Bowman requested to be heard on Item 3 on the Agenda and inquired as to the proper time she should come forward. Mayor Esteves said she could speak at the time the item was discussed.

Rob Means, referring to something he had received in the mail regarding Deepka Lalwani, said he thought one of the values of Ethics being pursued was honesty and described a piece of mail he had received that did not sound right; it referred to Ms. Lawani as accepting a discounted campaign headquarters from a Town Center developer; it sounded to him like

folks were trying to come up with something against Ms. Lawani; he felt it was something a consultant may have suggested; and stated he felt an apology should be given to Ms. Lawani.

ANNOUNCEMENTS

Councilmember Polanski reported she had attended the Harvest Festival on Saturday at Cardoza Park; thought it was very well done; and hoped it would be continued in the future. Councilmember Polanski further reported she had the opportunity to stop by the Milpitas High School and former Samuel Ayer High School to attend the First Inaugural Hall of Fame held on Thursday, October 14, 2004, and noted that one of the student inductees was Fire Chief Bill Weisgerber. Councilmember Polanski, on behalf of the 50th Anniversary Committee, announced the Committee had a Time Capsule Subcommittee that had been working on trying to gather items for the time capsule; there was an Essay, Art, and Photo Contest, which had a deadline of Monday, November 15, 2004; and the information could be found on the City's web site.

Mayor Esteves thanked the Milpitas Post and the Chamber of Commerce for sponsoring the Candidates Forum, noted it was being replayed on Channel 15, and encouraged everyone that had not yet seen it to watch.

ANNOUNCEMENT OF CONFLICTS OF INTEREST

Councilmember Livengood stated there were three items that he would abstain on, RA9 and item 15, explaining that he formerly worked for KB Homes, and at the direction of the City Attorney, he would also be abstaining on item 6 as well, although it was not yet determined if it was necessary or not.

Councilmember Livengood informed the Council that he was still experiencing a lower back strain and explained that if he got up every once in a while, he wanted the Council to know he was not disinterested or being rude but just needed to relieve the pain.

Councilmember Livengood apologized for not including the fact that the City Attorney had recommended he abstain from Item RA7 as well.

MOMENTS OF REFLECTION

Mayor Esteves explained that this item pertained to the Milpitas Code of Ethics Program and was a time of Council reflection; the Council agreed to monitor how well it was doing at role modeling the City Values of honesty, fairness, respect, teamwork, stewardship, and accountability; and this was the time for the Council to speak on anything related to the Milpitas Ethics Program.

Councilmember Polanski commended the Commissioners for coming out and working together so diligently at the Harvest Festival; said she was pleased to see in a recent Milpitas Post article that all the candidates supported the Milpitas Ethics Program article, commenting that the article posed a question to the candidates regarding campaign ethics. Councilmember Polanski said she was pleased to see how all of the candidates supported the Ethics First Program and wanted to especially thank Councilmember Livengood for his statement in the Post that the goal should be creating a process and an atmosphere where true ethics complaints can be fairly evaluated.

Vice Mayor Dixon complimented staff for the work done at the Harvest Festival let everyone know that Economic Development Commissioner Don Peoples had said all revenue received from the sale of the pumpkins would be going to the Milpitas High School for its Scholarship Program; she felt that it showed teamwork and stewardship within the Community.

Mayor Esteves expressed his thanks to Dr. Shanks and the Council for undertaking the last Ethics training; felt it offered a chance to express one's feelings about many issues; it promoted the City's Values of Honesty, Fairness, Respect, Teamwork, Stewardship, and Accountability; and he hoped it would afford the Milpitas Community to have more consciousness on the City's values, stating that there should be some action steps to promote public trust as well as the City's values.

Mayor Esteves thanked the Community Advisory Commissioners for their pursuit of ethics for the City and recalled a recent Mercury News article that said the city of San Jose should look at the example Milpitas was setting with respect to the Code of Ethics.

AGENDA

City Manager Wilson requested Item 9 (proposed Urgency Ordinance regarding Temporary Moratorium on Land Use Permits and Building Use Permits for Quasi-Public uses) be removed, explaining that staff would be evaluating the techniques and approach to this kind of consideration and would not be prepared to bring the item back to the Council prior to the November 16, 2004, Council meeting.

City Manager Wilson clarified that there would be no action taken tonight, there would be no moratorium in place, and the item would be reconsidered at the earliest on November 16, 2004; and it would be appropriate to direct any comments to the Planning Department or the City Manager's office.

MOTION to approve the agenda as amended by the removal of Item 9 for future consideration.

M/S: Livengood, Polanski.

Ayes: 5

CONSENT CALENDAR

Mayor Esteves inquired if anyone wished to make any changes to the Consent Calendar. There were no requests.

Councilmember Livengood said he would be abstaining on item 15.

MOTION to approve the Consent Calendar, items with asterisks on the agenda as submitted, in accordance with the staff recommendations.

M/S: Dixon, Livengood.

Ayes: 5

(Councilmember Livengood abstained on item 15.)

***5. Youth Sports Grants**

Approved two individual Youth Sports Grants of \$500.00 to Nastassia A. Hamor and \$150.00 to Randy Zappia and two organizational requests of \$1,000.00 to Milpitas PAL Soccer and \$980.00 to Southpawprep.

***7. City History Book**

Approved the proposed distribution of *Milpitas, Five Dynamic Decades*.

***8. Temporary Associate Planner**

Approved the hiring and funding of a temporary associate planner with an additional appropriation from the General Fund reserve balance in the amount of \$63,300.

9. Urgency Ordinance No. 38.764 Temporary Moratorium

Removed from the agenda; to be considered at a future date.

***10. Ordinance No. 266 Employee Salary & Total Compensation Information**

Waived full reading and adopted Ordinance No. 266 designating employee salary and total compensation information by job title as a public record.

***11. Planning Commission Bylaws**

Adopted Resolution No. 7477 amending the Planning Commission's bylaws to provide more flexibility in the items that may be considered during meetings conducted outside the regular meeting schedule.

- *12.
Underground Utility
District No. 5**
- Adopted Resolution No. 7478 extending the time provided for completion of the utility underground work on North Main Street, Weller Lane, and Winsor Avenue as specified in Resolution No. 7362 to December 1, 2005.
- *13.
Montague Expressway
Widening and Signal Work
(Project No. 4180)**
- Adopted Resolution No. 7479 granting final acceptance and releasing the Contractors bond.
- *14.
Curtis Park Well Upgrade,
Phase 1 (Project No. 7076)**
- Adopted Resolution No. 7480 granting final acceptance and release of the Contractors bond.
- *15.
LSA Associates
Senior Housing and Health
Center**
- Approved the amendment to the consulting services agreement with LSA Associates, Inc. to increase the not to exceed amount from \$135,000 to \$193,507, subject to approval as to form by the City Attorney.
(Councilmember Livengood abstained.)
- *16.
Anti-Virus Software Update**
- Approved the purchase of anti-virus software in an amount not to exceed \$15,297.05
- *17.
Miscellaneous Vendors**
- Approved the following purchase requests:
1. \$13,834.00 to Sutphen Corporation for the emergency yoke (platform support) replacement on fire engine # 3 aerial tower. (Funds are available from the Fleet Maintenance operating budget for this purchase.)
 2. \$7,983.00 to Republic Electric for the emergency replacement of traffic signal pole at the Southwest corner of McCarthy Blvd. and Bellew Drive due to crack at bottom of pole. (Funds are available from the Street Maintenance repair and maintenance budget for this purchase)
 3. \$10,777.13 to Western Pacific Signal, LLC to purchase an automated conflict monitor tester. This unit is required for testing and certification of traffic signal components. Two quotes were received from authorized distributors for this product and Western Pacific, LLC provided the lowest bid. (Funds are available from Traffic Signal Modification Capital Improvement Project budget (Project No. 4167) for this purchase).
 4. \$5,459.59 to Target Specialty Products to purchase 2,750 lbs of selective herbicide for the annual fall pre-emergent program. (Funds are available from Landscape Maintenance operating budget for this purchase.
 5. \$12,500.00 to Tecogen Natural Gas for annual preventive maintenance service, conducted quarterly, for the co-generation system at the Sports Center for the Recreation Services Division. (Funds are available from the Recreation Services operating budget for this service)
 6. \$7,000.00 to US Power, Inc. for annual service agreement for scheduled and remedial maintenance service for the UPS (Uninterruptible Power Supply) system that supports Police, Information Systems, and Public Works Departments. Three quotes were solicited and US Power submitted the most competitive quote. (Funds are available from the Public Works operating budget for this service).

PUBLIC HEARINGS

1. Police Captain Dennis Graham explained that this item was a Federal Local Law Enforcement

2004 Law Enforcement Grant

Block Grant in the amount of \$18,079, plus a required City match of \$1,557; the Grant specified that the monies be used for one of several program areas, including hiring and training officers, multi-jurisdictional task forces to prevent and control crimes, and procuring equipment and technology related to law enforcement; \$4,068 had been pre-designated for the Council S.A.F.E. Program; the Police Command staff had met and decided the remaining \$15,568 could best be used to purchase an anti-graffiti camera, an Intoximeter, WRAP devices, upgraded digital cameras and software, training batons and OC canisters, Stop Sticks, and K-9 sleeves; and, as required by the Grant, a Citizens Advisory Board had approved the items for purchase with grant funds.

Councilmember Livengood inquired as to how the anti-graffiti camera would be deployed. Captain Graham explained that the camera would be put in places where people were not supposed to be, and it was set to trigger at times when people were not supposed to be there (i.e., water pump stations late at night, public storage areas after hours, etc.). Councilmember Livengood expressed concern that the camera not be observing areas that normally would be public. Captain Graham stated the nature of the camera would not afford it to be used in those locations because it would constantly be squawking at people, but it could be set to warn people to stay out of the area.

Mayor Esteves expressed concern that a good deal of vandalism is done in public areas where people could see the graffiti and inquired how that would be taken care of. Captain Graham explained the camera could not be used in a place where people gathered. Mayor Esteves inquired what the rate of vandalism (graffiti) was in Milpitas. Captain Graham responded in relation to other cities, it wasn't a high rate by any amount of graffiti was considered serious.

Mayor Esteves opened the public hearing and invited comments. There were no requests.

MOTION to close the public hearing.

M/S: Gomez, Livengood.

Ayes: 5

MOTION to approve the expenditures as recommended.

M/S: Gomez, Livengood.

Ayes: 5

Councilmember Livengood, referring to the group of people making the expenditure recommendations, requested a list of whom they are.

2. 1696 South Main Street (APNs 86-34-017, -019, & -020)

Planning Manager James Lindsay reported that at the request of the applicant, the application had been continued from the October 5, 2004, Council meeting; on October 8, 2004, staff received a letter from the applicant withdrawing the application as they were unable to come to an agreement with the City on their request for financial assistance; the applicant would be redesigning his site plan and re-evaluating his product type against the Milpitas market; staff was hopeful the applicant would be submitting another application; and the project proposal did not work out for the applicant, therefore, the applicant would be looking at a different project concept.

Vice Mayor Dixon, referring to the comment that the application was withdrawn due to the request for financial assistance, inquired if staff was dealing with financial assistance for the affordability. Mr. Lindsay confirmed that was correct and said an agreement could not be reached on the level of assistance for the type of project the applicant was proposing; the applicant would be going back and submitting a different product type. Vice Mayor Dixon inquired if "a different product type" meant fewer affordable units subsidized by the City. Mr. Lindsay responded staff was not sure of the proposal and was waiting to see what the new proposal included.

Mayor Esteves opened the public hearing and invited comments. There were no requests.

MOTION to close the public hearing.

M/S: Gomez, Livengood.

Ayes: 5

MOTION to withdraw the Planned Unit Development No. PD2004-1, "S" Zone Approval No. SZ2003-11 and Use Permit No. UP2003-37 from the agenda.

M/S: Gomez, Livengood.

Ayes: 5

JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

**RA1.
CALL TO ORDER** Mayor Esteves called to order the regular meeting of the Milpitas Redevelopment Agency, meeting jointly with the City Council, at 7:47 p.m.

**RA2.
ROLL CALL** Present were Mayor Esteves, Vice Mayor Dixon, and Agency/Councilmembers Livengood, Polanski, and Gomez.

**RA3.
MINUTES** MOTION to approve the Redevelopment Agency minutes of September 21, 2004, and October 5, 2004, including joint meetings with the City Council, as submitted.

M/S: Polanski, Gomez.

Ayes: 5

**RA4.
AGENDA** MOTION to approve the agenda and Consent Calendar as submitted.

M/S: Polanski, Gomez.

Ayes: 5

Councilmember Livengood's abstentions on items RA7 and RA9 were noted.

***RA5.
Abel/Calaveras Right Turn
Lane (Project No. 4186)**

1. Rejected bids.
2. Approved revised plans and specifications.
3. Authorized re-advertisement.

***RA6.
Abel Street Midtown
Improvements (Project No. 8157)**

1. Approved budget appropriation in the amount of \$400,000.
2. Authorized the City Manager to execute an agreement amendment with JMH Weiss, based on time and materials not to exceed \$150,000, subject to approval as to form by the City Attorney.

***RA7.
Keyser Marston Associates, Inc.
Consulting Agreement** Authorized the Executive Director to enter into a Consultant Services Agreement with Keyser Marston Associates to prepare three Fair Reuse Reports. (Councilmember Livengood abstained.)

***RA8.
86 North Main Street Purchase** Adopted Resolution No. RA231 of the Redevelopment Agency authorizing the Executive Director to execute a Purchase and Sale Agreement for 86 North Main Street and execute a Certificate of Acceptance.

**RA9.
RE-APPROVE AGREEMENT
& RESOLUTIONS
KB HOMES SOUTH BAY** City Manager Thomas Wilson reported this item concerned re-approval of an agreement with KB Homes South Bay, Inc., to finance the management and design of streetscape improvements for Abel Street, between Corning and the Great Mall, and re-approval of Redevelopment Agency and Council resolutions authorizing execution of a Memorandum of Understanding between KB Homes South Bay, Inc., the City of Milpitas, the Redevelopment Agency, and the County of Santa Clara to provide affordable housing related to the Elmwood property development. Mr. Wilson noted that in addition to himself and Assistant City

Manager Blair King, Jayne Williams from Meyers Nave was present and serving as Acting City Attorney due to Mr. Mattas' unfortunate recovery from some surgery.

Acting City Attorney Jayne Williams said she was present at the Council's special meeting last week where the Council provided direction to the City Manager and to the City Attorney to bring back these two resolutions and agreement for re-approval and reaffirmation by the Council, and that was the action before the Council/Agency this evening. Ms. Williams reported as discussed last week, the reason for the reaffirmation and re-approval was because of a question raised in terms of a potential conflict of interest regarding Councilmember Livengood's participation in approvals or participation in discussions relative to these items, which involved KB Homes; under the Political Reform Act and Government Code 1090, there were restrictions and prohibitions relative to a public official participating in matters where the public official may have a conflict of interest; with respect to Government Code 1090, there was a prohibition which could result in contracts being void; and in an effort to insure that the actions the Council had previously taken would withstand any potential challenge and to assure that they are approved validly and with the approval of this Council, the City Attorney recommended that these items be brought back to the Council for reaffirmation. Ms. Williams further stated there was information that the City Attorney presented to the Council in Closed Session, some of which was attorney/client privilege, and if the Council would like to have her disclose some of that factual background, the Council could direct her to do so. Ms. Williams said she would like to also indicate that the Council's action of last week was to direct the City Attorney to make a referral to the District Attorney's Office, the Fair Political Practices Commission, and the Grand Jury relative to this item and upon the Council's direction, that was done.

Mayor Esteves said he brought this to the Council agenda, and it was his position that being an open government, it should be discussed so that everybody would know what's going on; and to be able to do that, he wanted to have an open discussion and presented the following motion.

MOTION to authorize the City Attorney to discuss the factual issues contained in the City Attorney's memorandum dated September 28, 2004, to the City Council on the potential conflict of interest and to authorize a release of the letters of referral to the District Attorney dated October 18, 2004.

M/S: Esteves, Polanski.

Councilmember Gomez said he was out; this one was way too political for his blood.

Mayor Esteves called for the vote.

VOTE ON MOTION: Ayes: 3 Noes: 1 (Gomez) Abstain: 1 (Livengood)

Acting City Attorney Williams said she would provide the Council and the public with a summary of the issue and facts as the City Attorney had presented them. Ms. Williams reported in April of this year, it was disclosed in the Milpitas Post that Councilmember Livengood indicated on his Form 700 (the conflict of interest form that all public officials must file) for the calendar year 2003 that he is the owner of a consulting firm that received income from KB Homes; around April or May, the City Attorney was asked by the Council to look into this issue and report to the Council relative to any potential conflict of interest issues. Ms. Williams explained that conflict of interest issues arise out of two bodies of law – the Political Reform Act contained in the Government Code and Government Code Section 1090; the Political Reform Act prohibits a public official from participating or making a decision where that public official has a financial interest or that it is reasonably foreseeable that there will be a material financial affect on a source of income for the public official; under the Political Reform Act, a source of income is considered an aggregate of receipt of

\$500 or more over a 12-month period; Government Code 1090 was a much more stringent statute that prohibits a public official from being financially interested in any contracts that come before the Council; if a public official participates in the making of a contract that is before their body where he/she has a financial interest, that contract can be considered void; also, there were very stringent penalties for violation of Government Code 1090, including potential criminal penalties.

Ms. Williams further explained that where a potential violation has already taken place, the City Attorney's role was limited to determining whether or not the potential violation could jeopardize the City, or in this case the Agency's action or decisions; the authority to investigate the violations and to enforce the Political Reform Act or Government Code 1090 was vested in the District Attorney and/or the Fair Political Practices Commission; it was not the City Attorney's role to investigate and enforce; however, it was the City Attorney's role to advise the Council as a body as to whether or not any actions taken as a Council would have any legal jeopardy or would be affected by a potential conflict of interest; and, that was the role she was advising in this instance.

Ms. Williams reported the City Attorney reviewed the various internal documents, interviewed Councilmember Livengood, and developed facts that were included in the correspondence to the District Attorney, the Fair Political Practices Commission, and the Grand Jury, as directed by the Council; in addition, there was a very lengthy chronology of events and meetings that was set forth in that communication indicating the participation, or lack thereof, of the Councilmember in regard to matters that involved KB Homes. Ms. Williams further reported Mr. Livengood informed the City Attorney that he believed that his firm consulted for KB Homes from February 2003 to July 2004; in fact, Mr. Livengood provided an affidavit under penalty of perjury indicating that as of July 2004, he was no longer employed as a consultant to KB Homes; this was very significant because the action the Council will take to reaffirm and readopt the two actions now does not have, in the Attorney's opinion, the 1090 potential violation and would not be considered as potentially voidable.

Ms. Williams further explained that Mr. Livengood also informed the City Attorney that he recalled consulting for KB Homes on two separate projects for short periods of time in 1980 and 1989; during 2003 and 2004, the City and the Redevelopment Agency were engaged in negotiations with the County of Santa Clara regarding the development of the Santa Clara County Elmwood property; the County, as part of its process for developing the Elmwood site, sought a residential developer to develop the Elmwood site; eventually, the County chose KB Homes South Bay to be the developer; a purchase and sale agreement was reached between the Agency and the County, and Councilmember Livengood was not present when the agreement between the Agency and the County was approved; pursuant to the agreement between the Agency and the County that was eventually reached, the Agency will eventually transfer portions of the Elmwood property to KB Homes; after the approval of the Elmwood transaction with the County, the City, and KB Homes South Bay in 2004, two agreements were entered into implementing this agreement; Councilmember Livengood either abstained or was not present when these contracts were approved; the Agency and the City held a number of Closed Sessions to discuss the Real Property negotiations with the County regarding the Elmwood property; Councilmember Livengood indicates that he was not present at any of these sessions; and the City documents, reviewed by the City Attorney, do not definitively indicate Councilmember Livengood's presence or absence from any or all of the Closed Sessions where KB Homes was discussed.

Ms. Williams said as she had indicated, a more in-depth investigation regarding Councilmember Livengood's participation may be required and that would be done by the investigative agencies as appropriate; based on the analysis that was performed, the City Attorney advised the Council that it would be prudent to re-approve the two agreements; that was the City Attorney's recommendation now that Councilmember Livengood was no longer

consulting with KB Homes, as evidenced by his affidavit, to insure that they are valid and validly approved under the Government Code 1090 restrictions.

Mayor Esteves said he was interested in protecting the two contracts as mentioned; this was very vital to the City because it could pertain to a possibility of providing affordable housing and, at the same time, acquiring the properties around the Elmwood County Jail. Mayor Esteves asked the City Manager how much value was there in the two contracts. City Manager Wilson responded the value on the Elmwood acquisition was approximately \$135 million; the housing component involving KB Homes in relation to the ultimate development of senior housing on North Main Street was a commitment from KB Homes as part, and only part, of their affordable housing commitment of at least \$5 million to that project.

Mayor Esteves said he wanted a thorough investigation in order to get factual data. The Mayor shared two emails of his correspondence with the City Attorney, one dated August 11, 2004, and another dated August 12, 2004, regarding this matter.

Councilmember Polanski stated that, unfortunately, this was not an issue she found political; it was an issue that was very serious to the citizens of Milpitas, to all the residents of Milpitas, the people that live here and work here; this could have meant, and could possibly still mean \$140 million of City revenue at stake; that, to her, was very serious. Councilmember Polanski asked the Acting City Attorney for clarification that the agreement originally approved by the City Council on February 17, 2004, and the MOU originally approved by the City Council on May 18, 2004, could be considered void if the Council does not reaffirm them. Acting City Attorney Williams responded yes, that was a very significant risk and was really why the Council was taking the action before it this evening.

Councilmember Polanski stated that the City does have an Open Government Ordinance and another one was proposed that would allow actions out of Closed Session; one of the things the Council did by its motion tonight was to allow that information to come out because there was factual information and there had been a lot of rumor, gossip, and speculation over the past month, and she thought it was appropriate. Councilmember Polanski said she believed it was very critical that this Council reaffirm these two decisions because we are talking about approximately \$140 million; and, coming out of a recession, she took this action very seriously and for the citizens she represented, it definitely was not a laughing matter.

Vice Mayor Dixon commented that the Council was told that part of the delay in the process was because Mr. Livengood was not being cooperative with the request from Mr. Mattas; the Attorney apparently had tried at least twice in telephone conversations and Mr. Livengood was not cooperative. Following up on Councilmember Polanski's comments, Vice Mayor Dixon said we're into the very beginning throws of an Open Government Ordinance; according to the San Jose Mercury, it seemed to be the number one topic, at least for the city of San Jose; and quoted from the League of California Cities on public confidence and trust. Vice Mayor Dixon said what disturbed her more than anything was that in going back and looking at the 700 Forms, it was stated by Mr. Livengood that on January 20, 2003, he had formed his own consulting company and his only client was KB Homes; the disturbing part was that in all of 2002, after the Midtown Plan was approved and was being implemented, there was a lot on the table and a lot at stake; KB Homes stands to make millions off their project; there were a couple of other home builders involved, including RGC, and what surprised her in looking at the 700 Forms was that there was also a working relationship Mr. Livengood had with RGC. Vice Mayor Dixon further stated this was troublesome and, hopefully, the investigation will clear up any unanswered questions, and she appreciated that Mr. Livengood had followed through with a signed affidavit.

Mayor Esteves called attention to two editorials in the Mercury News, one on September 29 and one today (October 19) on ethics and ethical standards for public officials.

Councilmember Gomez asked the Acting City Attorney for confirmation that the Attorney's Office started looking at this matter in April or May of 2004. Ms. Williams responded that was correct. Councilmember Gomez commented that one of the contracts was entered into in February and one in May, after direction was given for the City Attorney to look into this, and he was trying to understand if the City Attorney's office was aware there was potential conflict of interest, and the City Attorney's role is to advise the Council on all legal matters to keep the Council out of trouble, how wasn't this malpractice and why didn't the City Attorney advise the Council that there was a potential conflict of interest for one Councilmember. Councilmember Gomez questioned why that wasn't brought to the Council's attention earlier?

Acting City Attorney Williams responded the analysis relative to a potential conflict of interest does take review; at the time this item came before the Council in May, as she understood it, there was little information that could be provided to the Council relative to the potential of that conflict of interest. Ms. Williams added that there was an obligation of the public official to bring matters to the body and disclose any conflicts of interest on the record and to take the self-responsibility to recuse or abstain from any item where there may be a potential conflict of interest; in addition, it was incumbent on the public official to bring that to the attention of the City Attorney; it was not brought to the City Attorney's attention by Councilmember Livengood, so the City Attorney was not able to advise and counsel prior to the May 18 action.

Councilmember Gomez said he understood that but, regardless of whether the Councilmember brings it or not, he thought it shouldn't have been difficult for the City Attorney's office to point out there was a potential for a conflict and it was surprising to him that it came four or six or seven months after some of those contracts were entered into.

Vice Mayor Dixon stated that when an official has been in office for almost 30 years, it should come as no surprise as to what his own responsibility was as an elected official; in addition, the Council just approved a Council Handbook because of this issue and it was now stipulated in the Handbook that the first two weeks of April each year, the City Attorney will review all Council 700 Forms, including the City Manager's, and the City Manager will review the City Attorney's so this never happens again.

Councilmember Polanski said for clarification, from May until September was four months, not five, six, or seven, and there was a lot of information about 1090, which was different than abstaining as Councilmember Livengood was doing this evening; 1090 clearly states that these contracts can be null and void if you have an interest that aggregates over \$500, which this did; and again, for the public record, we're talking about approximately \$140 million that was at stake to this City.

MOTION to authorize the City Council and, as appropriate, the Milpitas Redevelopment Agency, re-approve and reaffirm the agreement between KB Homes South Bay, Inc., and the City of Milpitas related to financing of design costs for streetscape improvements for Abel Street between Corning and Great Mall Parkway and that the City Council and Milpitas Redevelopment Agency re-approve and reaffirm the Memorandum of Understanding among the Milpitas Redevelopment Agency, the City of Milpitas, the County of Santa Clara, and KB Homes South Bay, Inc., related to the provision of affordable housing as part of the KB Homes South Bay development on the Elmwood property.

M/S: Dixon, Polanski.

Ayes: 4

Abstain: 1 (Livengood)

**RA10.
ADJOURNMENT**

There being no further Redevelopment Agency business, Mayor Esteves adjourned the Redevelopment Agency meeting at 8:30 p.m.

The City Council meeting continued.

REPORTS OF OFFICERS AND BOARDS

3. September 30, 2004, Milpitas Post Article

City Manager Wilson reported this item was an update by the Police Chief regarding an article in the Milpitas Post and the Chief's referral to the District Attorney's Office. Mr. Wilson reminded the Mayor that Ms. Bowman had requested to speak to this item.

Mayor Esteves explained that he requested this item be agendaized for public information and proceeded to read the article that was printed in the "Talk of the Town" section of the Milpitas Post regarding a Milpitas Police Officer who is the spokesperson for the politically active Milpitas Employees Coalition and who has voted in Milpitas since 1994 though he has lived in Alameda County since 1997.

Police Chief Charles Lawson reported that in regard to the Election Code violation allegations by the Milpitas Police Officer, he had been advised just this evening by the City Attorney's office that the District Attorney will not be issuing a complaint in this matter.

Mayor Esteves invited Ms. Bowman to address the Council, reminding her of the Council's speaking time limit of two minutes.

Terry Bowman said she was shocked that this item was placed on the agenda; to have an agenda item where the Mayor just read from a newspaper article seemed an inappropriate use of community time; and she thought there was no legitimate reason for this item. Ms. Bowman further stated she sent a letter to the City Attorney yesterday entitled "Removal of Agenda Item from Milpitas City Council's October 19, 2004, Meeting" and requested that this letter be attached to the minutes of this evening's meeting. Ms. Bowman stated there was a questionable legality issue here in not only putting this on the agenda but publicly discussing details of a possible investigation; there was no legitimate reason to have this here on the agenda tonight; the matter has been resolved; you will not be able to convince me or many other people that the issue of where someone is registered to vote is a legitimate issue; certainly, the Santa Clara County District Attorney's office reviewed it and had no problem in almost immediately determining that there is no criminal allegation worthy of pursuing; if Eric Emmanuele is not a citizen of Milpitas, then the only possible legitimate reason for putting this on the agenda was to look at the fact that he's a Police Officer for the City of Milpitas; however, when there are questions of possible misconduct by Peace Officers, that was a matter handled either within the Department or through the District Attorney's office, but certainly within the confines of those rights asserted Peace Officers under the Peace Officers Bill of Rights.

Mayor Esteves thanked Ms. Bowman for her comments, informing her that her two minutes were up.

Councilmember Gomez asked that the time limit be waived. Mayor Esteves said the Council could vote on it and asked Councilmember Gomez how many more minutes. Councilmember Gomez said he would give her as long as she felt was necessary.

MOTION to allow Ms. Bowman to speak for as long as she feels necessary.

M/S: Gomez, Livengood.

Ayes: 4

Noes: 1 (Esteves)

Ms. Bowman continued, stating that she saw that the Mayor must be disappointed, but it really was a matter of fairness that she appear before the Council because pursuing Officer Emmanuele and making these allegations, and making it as if there's the appearance of impropriety such as voter fraud, was ludicrous and not done in the spirit of professionalism or fairness. Ms. Bowman said as she was saying before the Mayor notified her that the time was up and then the vote occurred that allowed her to speak further, there are specific rules, regulations, and laws that govern the rights afforded to Peace Officers under Penal Code

Section 832.7, which was outlined in her letter; there was also the Peace Officers Bill of Rights that you cannot just put a Peace Officer out there and rake him over the coals and not give him an opportunity to respond in an adequate manner, to have the rights that have been afforded to him, that the legislature has sought, not only to enact, but enforce. Ms. Bowman again stated there was no legitimate reason for the placement of this matter on the agenda and said the concern was that the placement of this item was motivated by the political actions of Officer Emmanuele; if Officer Emmanuele was not engaged in political involvement in this City, if he did not actively disagree or support other candidates seeking office, other than some of those seated here tonight, that this would not have occurred; and it was grossly inappropriate to take any retaliatory measures against Officer Emmanuele because of his political opinions, his political views, and his political involvement. Ms. Bowman said it was really quite shameful and called the placement of this agenda item and the reading of that newspaper article personal and political but not professional or appropriate. Ms. Bowman further stated that Officer Emmanuele deserved an apology, she had finished her statement, invited any questions or comments, and said she would like to respond to them if there were any.

Mayor Esteves said that when he placed this item on the agenda, he consulted with the City's legal staff and asked legal staff to respond about the legitimacy of the item on the agenda.

Acting City Attorney Williams responded the discussion of the newspaper article was not prohibited and was appropriate for the Council to discuss if that was the Council's pleasure; as we responded today to the correspondence that came from Ms. Bowman to our office late yesterday afternoon, it was appropriate for the City to go forward with this item as the Council had but the City would maintain the confidentiality of personnel information protected from disclosure from the Penal Code 832.7 as Ms. Bowman cited; so the discussion before the Council this evening was limited relative to the newspaper article and the information that the Police Chief provided relative to the District Attorney's decision.

Ms. Bowman asked to respond and stated any legal issues and legal recourses that we have will be pursued, and it was not her intention to engage in a legal discussion about any possible remedies that we have in this forum; there is an appropriate forum to do that, (a court of law), and it will be pursued in that forum; but putting aside any legal issues here, putting aside the legality of what has occurred, how is this relevant to the issues before the City of Milpitas; how can someone here not come to the conclusion that this was just really an action against Officer Emmanuele because of his political involvement; what's the purpose of taking up an item on the agenda of a meeting that is heard twice a month to discuss where someone is registered to vote?

Mayor Esteves responded if Ms. Bowman was asking him, his purpose was because he was for accurate information, and that was why he wanted to bring it up and, hopefully, it would bring accurate information regarding this matter for the benefit of the public.

Ms. Bowman said certainly you would agree that there are hundreds, if not thousands of Milpitas citizens who are potentially engaged in possible misdemeanor conduct and they are never an agenda item; you do not habitually put people on the agenda when there's a question about where they are registered to vote and certainly once you received clarification and confirmation from the District Attorney's Office that no crime has been committed, there's certainly no purpose in having this discussion other than to somehow personally attack Officer Emmanuele or humiliate him by bringing up his name and bringing up that he was "investigated."

Mayor Esteves said this was a news item and, hopefully, the truth will always come out.

Ms. Bowman said Mr. Mayor, you do not put every news item, and certainly not news items that occur in the Talk of the Town section, on the agenda and that is the issue that we bring forward today that this was an inappropriate measure to be taken and not justified.

Mayor Esteves asked to hear from his colleagues.

Vice Mayor Dixon asked Police Chief Lawson if he was told by anybody on Council to refer this to the DA. Chief Lawson responded no, he was not. Vice Mayor Dixon asked Chief Lawson to share his reasons for forwarding it on to the DA. Chief Lawson responded he read the article. Vice Mayor Dixon asked if it was his own independent conclusion that it was at least worthy to look into would be our only assumption. Chief Lawson said he asked the DA's Office if they look at these types of cases. Vice Mayor Dixon asked what the Chief was given today by the DA said there was no crime committed or that they would not be accepting this as a case to look into. Chief Lawson said they would not be moving forward to charge the officer. Vice Mayor Dixon said but not necessarily there was no crime committed, that they are just moving it back, and was this more of a personnel problem. Chief Lawson responded he didn't know. Vice Mayor Dixon said we have to have some clarification because the implication was that one of us put it into the paper and that possibly we forwarded it on to the DA; that was not the case; and when you have an article that does show up, our residents do read it, and it refers to an employee, and this was just a matter of clarification, not making any judgment call whatsoever.

Ms. Bowman, addressing the Vice Mayor, said she certainly wasn't taking the position that every time the Chief of Police calls the DA's Office and inquires about something that it becomes an agenda item; that was the main issue.

Councilmember Polanski asked the Mayor if she could ask the City Attorney for a point of order because she didn't plan to spend the evening in court; as she read the agenda item, it stated "update from Chief Lawson's Office on referral to District Attorney regarding possible voting violation of employee", the update and all the information had been received, and it was now appropriate for the Council to note receipt and file.

Acting City Attorney Williams responded this was an informational report, the Council heard the report, and it would be appropriate for the Council to move on.

Mayor Esteves asked what was the pleasure of the Council.

Councilmember Livengood said he wanted to make a couple brief comments because he was planning on making sure he didn't mention the officer's name but that bell had been rung; it was on the internet and it was read tonight from the podium so he didn't think we have to worry about that; that breach of confidentiality has already occurred; his problem with all this was it was a real stretch to believe that this item was on the agenda and it has nothing to do with the fact that the target of this was involved heavily in politics in Milpitas; that was a real tough thing for him to believe; and the Mayor can say it and anybody else can say it but he was not buying it. Councilmember Livengood said what he worried about this was it gave the appearance of retribution; you have an employee who's exercised his rights to say what he thinks about the Council, he has that right even though he's a City employee State law and federal law give him or her the right to say what they think; when this all of a sudden appeared on an agenda two weeks before an election that this person has worked on, the word retribution was the first word that came into his mind; never had he ever seen an agenda item about anybody ever relating to voter fraud or registering in one town and voting in another in all the years he had served; so here we are two weeks before an election and we have an item on the agenda that targets one of our City employees who's confidentially protected by State law and we're breaching that confidentiality and we're giving a very clear appearance that he's being targeted and he's being set up for retribution because he has voiced his opinion, he's used his right to free speech. Councilmember Livengood further stated he was surprised

that the City Attorney let this go on the agenda; we're two weeks away from an election and nobody will ever convince him that this item was just for information to clarify things. He thought it was a targeted attack on an employee who just wanted to stand up and say what he thought about City government and for that, he's being targeted, his confidentiality is being breached, and it was bad public policy to even be having this item on the agenda.

Mayor Esteves said the coming out of this article in the Milpitas Post was way beyond this Council and myself, it was pretty independent, and it just so happened it went out recently; if it had gone out earlier, then it would have happened earlier; it was just a series of happenings that were going on right now, and he was surprised himself that it was coming out at this time, too.

MOTION to note receipt and file.

M/S: Dixon, Livengood.

Councilmember Gomez said he was really disappointed; he agreed with what Councilmember Livengood said; he was really disappointed to see this even show up on the agenda; it was just another thing he was disappointed with the City Attorney's Office for even letting it get on the agenda; their role was supposed to be to advise us and keep us out of this kind of trouble and here we are being exposed to serious liability and it troubled him; the only thing he had to tell them was you goofed, you blew it, and he was really disappointed in the Mayor, too.

Mayor Esteves said the Council didn't have to vote since it was a note receipt and file.

Councilmember Gomez requested a copy of the memo from either the attorney or our City Attorney that was given to our office regarding this whole issue.

Jose Salcido said as an observer in the audience talking about open government, he was surprised that we talk about conflict with Mr. Livengood, we talk about open government, and nobody is willing to admit that anything is going on here that's on the political front; he was the President of the Central Coast Chapter of PORAC, State of California for Peace Officers, they represent Peace Officers across the State, and they consider putting out confidential information on a peace officer very serious. Mr. Salcido just wanted to let the Council know that they will be watching this unfold and did consider it serious and believed that Peace Officers personnel records were confidential and should be kept within the confines of the department.

4. Public Arts Policy Concept

City Manager Wilson reported this item related to the potential approval of a Public Arts Policy concept for the City and he would be making the presentation. Mr. Wilson presented a brief background reporting that on August 17, 2004, the City's Arts Commission made a presentation to the Council regarding the potential establishment of a policy for the purchase and installation of public art in the City; the Council, at that time, received a presentation from the Arts Commission on a number of communities that have very aggressive and positive public arts policies and that extend a certain amount of their capital resources, usually a percentage dedicated to the installation of public art throughout their communities. Mr. Wilson noted that Arts Commissioners Robin Hays, Linda Rabe, Harriet McGuire, and Mareile Ogle were present and also noted that Linda Rabe did a lot of the work in preparing the document that was presented and recommended to the Council by the Arts Commission. Mr. Wilson reported that at the conclusion of the presentation, the Council enthusiastically requested that staff review and prepare a potential Arts Policy and bring it back for Council consideration through the Arts Commission within 60 days. Mr. Wilson reviewed the proposed policy and the seven points of the policy and reported that it was presented to the full Arts Commission on September 27, 2004, and the Commission unanimously recommended approval to the Council.

Councilmember Livengood inquired about the difference between the Public Arts Committee and the current Milpitas Arts Commission and asked if both those bodies be making recommendations to the Council. Mr. Wilson responded it would actually be one body; it would be the expanded Commission to the Public Arts Committee that would be the sole advising body. Councilmember Livengood inquired how would the art be acquired. Mr. Wilson responded the Public Art Committee would establish the context of the way they would administer and make recommendations to the Council; there could be a competitive process or there could be submissions from existing art pieces that are available.

Vice Mayor Dixon commented that there are companies that have some incredible pre-cast bronze pieces of art that are already made and the prices is quite substantially lower than having an artist go out and get it, she thought there would be many opportunities to go around town and survey the city and come up with areas of interest that would be appropriate for something like this. Mr. Wilson said that was what the Master Plan would do.

Commissioner Robin Hays said the Commission was very happy with the presentation; it seemed very well thought out; obviously, Mr. Wilson had done this before because he was looking at all the problems; she agreed with the Vice Mayor that you can find a lot of really beautiful pieces and commissioned pieces were good as well; and stated the need to catch up with other cities and in that respect, we are going to do some bargain shopping, probably as well as some commission work to make this a beautiful city and give it a personality.

Mayor Esteves asked for clarification as to the composition of the Arts Committee. Mr. Wilson responded as outlined in the proposal, it would consist of the Arts Commission full membership and two members designated by the Alliance for the Arts. Mayor Esteves inquired why the Alliance for the Arts. Mr. Wilson responded the Alliance has been a significant contributor in moving public art into our consciousness; they have been very active, and the idea was to make the Committee inclusive of the kinds of movers and shakers in the sense of the public art efforts. Mayor Esteves commented that he was not against the Alliance for the Arts and they could be one participant, but there could be other art groups also in the City and the Committee should be composed of artists and not just coordinators of art.

Commissioner Hays said she thought that would make it very difficult for them as a group; having the Alliance with them would be helpful because their purpose is to look at our city and see where it needs art with no conflict of interest; most other art groups, such as the photography group or other groups, that was not their purpose.

Commissioner Linda Rabe added that based on her experience and the issue that was just stressed relative to conflict of interest, when you have artists who are potentially eligible to be paid by the City for their art pieces, it was problematic to have them as members of the committee or commission because then it takes them out of the running in terms of the competition and their ability to provide the art; in her experience from other cities, the artists that do not want to provide their art are on the committee, but if there are artist that do want to participate in the program, they would be precluded from doing so if they were on the committee that makes the decision.

Mayor Esteves said he was trying to tap on their artistic talents, the artists themselves and not their personal interests.

Commissioner Rabe shared a brief history of how she and the Alliance came together and said she thought it had a good future going and if we work together, the Alliance was definitely dedicated not to a particular type of art but to putting art in a permanent place in the City, and she thought it would work. Mrs. Rabe also noted that the decision at the Commission meeting was unanimous.

Councilmember Polanski said she thought this was wonderful and was pleased with the aspect of jump-starting the public art with the \$125,000 annually; she thought it was moving in the right direction and was an excellent beginning.

Mayor Esteves said he was very pleased because he brought this item to the Commission's attention a year ago and commended all the members of the Arts Commission for their work.

MOTION to approve the draft Milpitas Public Arts Policy.

MS: Gomez, Polanski.

Ayes: 5

RECESS

Mayor Esteves recessed the City Council meeting at 9:25 p.m. The City Council meeting reconvened at 9:30 p.m.

NEW BUSINESS

6. Streetscape Designs Main & Abel Streets

Councilmember Livengood left the dais and the Council Chambers.

Acting Planning Manager James Lindsay commented that this was an exciting project that has been a labor that has involved input from every City department, and it started about 18 months ago when the Council established a new capital project and approved a contract with Nolte and Associates. Mr. Lindsay introduced the consultants who were present and reported that the Council's action tonight would complete the Main Street tasks as part of this contract with Nolte; another capital project was created to develop these concepts into a final design package from North Main Street from Weller to Carlo; the scope of the presentation for the concept was from Weller all the way down to Curtis. Mr. Lindsay reported the Planning Commission reviewed both streetscape plans on August 25, 2004, and October 13, 2004, and recommended approval with the recently modified Abel Street median in front of the Serra Center, and that modification was included in the plans in the Council's agenda packets. Mr. Lindsay briefly presented the design concepts for Abel Street.

Greg. Tung, Friedman, Tung & Bottomley, presented a more detailed presentation on the design concepts for Main Street for the 1.1 miles of Main from Curtis to Railroad Avenue intended to support the Midtown Specific Plan.

Councilmember Gomez said he thought it looked great and asked what were some of the concerns the businesses had. Mr. Lindsay responded at the community meetings, all the concerns related to the Abel Street design because currently there is no median on Abel; staff had since revised that median design to allow all of the turning movements they currently enjoy on Abel Street; and the two specific changes since the community meetings were opening the median in front of the Post Office and the changes in front of the Serra Center. Councilmember Gomez asked if the businesses had seen the changes. Mr. Lindsay responded yes, staff had met with them.

Vice Mayor Dixon said she was very pleased with this and complimented staff and the team and the community because they all cooperated from the beginning; she was also very pleased with the accommodation worked out for the raised median.

Councilmember Polanski echoed her colleagues comments stating that this was a magnificent project and very exciting; meeting the needs of the businesses on Abel was important, agreed with the gateway or monument coming in from Serra, and the Palm trees were attractive and did make a nice entryway. Councilmember Polanski asked if there was a timeline. Mr. Lindsay responded the first segment for North Main Street would be in place for the opening of the library; Abel would be done in phases and it was hoped to have the southern end of Abel finished in time for the sale of the KB Homes.

Mayor Esteves said he appreciated the plan and thought it was good to have a skeleton of the development so that when anybody comes in, they would conform to the plan so there will be consistency. Mayor Esteves further stated that he hoped in terms of some of the features, like the median, they could be looked at a second time to address the concerns of the businesses. Mayor Esteves thanked staff and all those who participated and contributed to the development of the plan.

MOTION to approve the conceptual Streetscape Designs for Main and Abel Streets.

M/S: Dixon, Gomez.

Ayes: 4

Abstain: 1 (Livengood)

ADJOURNMENT

Vice Mayor Dixon asked that the meeting be adjourned in memory and honor of former Planner Bob Oteri who worked for the City for many years. Vice Mayor Dixon said much of what we've seen in the earlier part of the city was attributed to Bob, and there wasn't one part of the City that he didn't have his personal touch imposed on.

Mayor Esteves said he would also like to adjourn in memory of Val Bersabe, who recently passed away.. Mayor Esteves said Mr. Bersabe was one of the first Presidents of the Fil-Am Association who started programs like the Fiesta and the scholarship program; he was part of the City's cultural diversity and had a passion for education.

There being no further business, Mayor Esteves adjourned the meeting at 9:53 p.m. in memory and honor of Bob Oteri and Val Bersabe.

Gail Blalock
City Clerk

The foregoing minutes were approved by the City Council as submitted on November 2, 2004.

Gail Blalock, City Clerk

Date

APPROVED MINUTES
CITY OF MILPITAS

Minutes:	Special Meeting of Milpitas City Council
Date of Meeting:	October 12, 2004
Time of Meeting:	6:00 p.m.
Place of Meeting:	City Hall Council Chambers, 455 E. Calaveras Blvd.

ROLL CALL

Mayor Esteves called to order the Special meeting of the Milpitas City Council at 6:00 p.m. Present were Mayor Esteves, Vice Mayor Dixon, and Councilmembers Gomez and Polanski. Councilmember Livengood was absent.

PLEDGE

Mayor Esteves led the Council and audience in the Pledge of Allegiance.

CITIZENS FORUM

Mayor Esteves invited members of the audience to address the Council on any subject not on the agenda, requesting that remarks be limited to two minutes or less.

There were no speakers.

AGENDA

MOTION to approve the agenda as submitted.

M/S: Polanski, Dixon.

Ayes: 4 Absent: 1 (Livengood)

**ADJOURN TO
CLOSED SESSION**

Mayor Esteves publicly stated the Council would convene in Closed Session to discuss the one item listed on the agenda, Conference with Legal Counsel – Anticipated Litigation, Significant Exposure to Litigation, One Case.

Mayor Esteves adjourned the meeting to Closed Session at 6:02 p.m.

The City Council meeting reconvened at 7:12 p.m. with Mayor Esteves presiding and Vice Mayor Dixon and Councilmembers Gomez and Polanski present. Councilmember Livengood was absent.

ANNOUNCEMENT

Acting City Attorney Jayne Williams announced that the Council met in Closed Session under Item IV on the agenda to discuss Anticipated Litigation, one matter; the Council directed the City Manager to agendaize on the next City Council meeting agenda two items for Council approval, a re-approval and reaffirmation of two resolutions approving contracts; the first is a resolution authorizing a contract for public improvement design cost agreement between the City and KB Homes South Bay; the second is a resolution authorizing a Memorandum of Understanding among the Agency, the City, the County, and KB Homes South Bay concerning affordable housing on the Elmwood property; the vote for that particular action was 3/1 with Councilmember Gomez in opposition and Councilmember Livengood absent; the other action that the Council took in Closed Session was to direct the City Attorney to contact KB Homes to obtain further information in regard to Councilmember Livengood's potential employment relationship with KB and also to have a conversation with Councilmember Livengood to obtain an affidavit relative to his employment relationship with KB Homes; the vote was 3/1 with Councilmember Gomez in opposition and Councilmember Livengood absent.

**REPORT ON REVIEW
OF POTENTIAL
CONFLICT OF INTEREST**

City Manager Wilson reported this was an open session item, a City Council item, and for the Council's discussion and review of potential conflict of interest issues; Mr. Mattas had discussed this matter as City Attorney and present this evening was Acting City Attorney Jayne Williams.

Mayor Esteves asked for a report from the Acting City Attorney.

Acting City Attorney Jayne Williams reported the Council met in Closed Session, the information provided to the Council by the City Attorney was provided under the Closed Session confidential regulations and authority; the Council had information that was confidential and attorney/client privileged relative to a potential conflict of interest that may have resulted in regard to Councilmember Livengood's relationship with KB Homes and actions that the Council took relative to approval of contracts that involved KB; the issue before the Council was in regard to what further action the Council would like to take and what authority the Council will be giving the City Attorney for future direction and action.

Mayor Esteves asked the City Attorney to give an introduction of this item to explain what are we talking about and what can we disclose to the public at this time.

Acting City Attorney Williams responded the Council's discussion would be limited relative to agreement by a majority of the Council as to any disclosure of the information the Council had been provided by the City Attorney. Ms. Williams suggested that the Council first take action as to whether or not it would want to have this discussion and the scope of the discussion in this public session.

Councilmember Polanski asked the Acting City Attorney because there are other regulations or regulatory bodies that could investigate a matter of conflict of interest, would it be appropriate, if a majority of the Council agreed, to ask the City Attorney to allow us to discuss those types of regulatory agencies in open session.

Acting City Attorney Williams responded it would be appropriate, if that is your pleasure, to refer the matter to the appropriate regulatory agency, whether it be the FPPC or the District Attorney's Office; you could direct the City Attorney to provide the appropriate information, including the attorney/client communications that had been provided to the Council, to those agencies. Councilmember Polanski asked if that would be pursuant to the Code of Regulations 18700. Ms. Williams responded that was correct and the Government Code 1090.

Vice Mayor Dixon said she wanted to be clear that there were outside regulatory agencies, the Council's avenue was either the District Attorney's Office or the FPPC or could it be a combination of both if the Council directs the attorneys to look into the exceeding of the threshold, and asked if that could be separate from a direction to the District Attorney for the balance of the discovery? Ms. Williams responded as she understood the question, the Council could refer and get an opinion from the FPPC and also at the same time request that the District Attorney's Office investigate as appropriate, but it would be up to those agencies as to whether they would take action.

Mayor Esteves inquired if the Grand Jury was also relevant at this point. Ms. Williams responded the Grand Jury generally has a mind of its own; there could be referrals made to the Grand Jury but whether they would take it up it would be up to the Grand Jury.

Councilmember Polanski commented that the Council had held a number of discussions relative to open government; there was an open government ordinance; she had read in the paper several times over the past several months about 1090, which she knew was something that affects the Council; she also knew there was a saying that ignorance was not a reason to not be aware of the law; she understood that 1090 has been around; based on our commitment to accountability and to open government in this City, she didn't see how the Council could do anything but direct staff to pursue these other parallel paths to insure that everything has been done legally and to insure that we are conducting ourselves to the best of our ability.

Mayor Esteves asked the Acting City Attorney to provide an introduction to the public about this item, what the Council can discuss, so people listening will know what we are talking about.

Acting City Attorney Williams said there was a potential conflict of interest issue that had been raised relative to Councilmember Livengood's employment with KB and actions that the Council took relative to contracts that did involve KB Homes; under the Political Reform Act and Government Code 1090, there were potential legal ramifications in the event it is determined there is a conflict of interest; the Council, in an effort to insure that the actions taken relative to these contract approvals was appropriate and would withstand any potential legal challenge, directed that they be brought back to the Council for reaffirmation and re-approval; with respect to any conflict of interest, the appropriate regulatory authorities, the FPPC and/or the District Attorney's Office, will be asked to conduct an investigation to see if there has been a conflict of interest violation.

Mayor Esteves asked if the Acting City Attorney could disclose a general description of this case, why are we here or what can we discuss.

Ms. Williams responded without authorization from a majority of the Council to disclose facts and discussions from Closed Session, she would not feel comfortable engaging in a discussion at this time; after the information was provided to these authorities and following their fact-finding investigation and conclusions, a discussion would be more appropriate.

Mayor Esteves said he wanted to give the general public enough information about what was being discussed without exposing the City or anybody to liability so people will know what's going on.

Vice Mayor Dixon said she thought two distinct things had to happen; first, to re-approve and reaffirm the contracts mentioned before, which should be done as expedient as possible to avoid any possible liability, and second, to move forward with respect to the information the Council had been given; she thought the Council had enough information to at least direct the staff and attorneys to go ahead and document the information that was contained in the exceeding of the threshold (87100) and direct the attorneys and staff to follow through with the original request concerning staff asking KB for particular documentation and if Councilmember Livengood is willing, an affidavit in regard to his contract status with KB; what concerned her now was the 700 form, which the Council and commissioners are obliged by law to note only once a year any possible conflict of interest; in this particular case, Mr. Livengood's relationship with KB Homes through his consulting company was not disclosed publicly; it was on the 700 form so he did that legally but the rest of his colleagues, the City Attorney, and the City Manager were unaware; in fact, it was discovered accidentally by just going through the 700 forms. Vice Mayor Dixon further stated she thought the Council needed to be very clear and, hopefully, everything can be done with great expedience from everybody involved; and that was the direction she was looking for.

Councilmember Polanski added that she believed the 700 forms are due in April, so that would have been April of 2004; there was an article in the paper that she thought everyone read, in the Milpitas Post where Councilmember Livengood stated that he was a consultant for KB Homes and she thought this precipitated the Council to move forward and to review those; she thought the timing was unfortunate, but we are in a critical stage with KB Homes and the development and we really need to expedite the process and she thought we need to move forward on that immediately.

Mayor Esteves inquired about the direct action of referring it to the District Attorney or FPPC and the Grand Jury. Councilmember Polanski said that was what she was including because to her, these were different parallel paths the Council needed to move forward on that were in the best interest of the City.

Acting City Attorney informed the Mayor that it should be done by a motion of the Council.

MOTION to direct the City Attorney to present the information the Council has received relative to any potential conflicts of interest under California Government Code Regulations 18700 or 1090, to do this as expedient as possible to both regulatory agencies and the Grand Jury.

M/S: Polanski, Dixon.

Councilmember Gomez said he would be voting against the motion; he thought this was a classic example of why people are pissed off at you three, stating they had a total knack for just bringing politics into this Chambers; Councilmember Polanski mentioned timing and he thought she was perfectly right; the timing was perfect and it was three weeks before the election; this whole issue came out in April and now we are dealing with it three weeks before the election; why else would the Mayor be so desperate to get this before everybody right now; why else would you violate the Brown Act when you were talking to the Post and saying this had something to do with a Councilmember; it could have had to do with anybody – a commissioner, the Mayor, staff, but when you talked about the potential violations or conflict of interest and you specifically said it had to do with the Councilmembers, so if we are going to go down this road, he would like to request that we get some sort of staff report from the City Attorney dealing with the Mayor's potential conflict of interest with the Town Center issue and Councilmember Polanski possibly violating the Brown Act.

Mayor Esteves asked the City Attorney to state when the Council started looking into this because Councilmember Gomez was giving the impression that we just started doing it now. Assistant City Attorney John Bakker responded his understanding from the City Attorney was that he began looking at this item in the April timeframe. Mayor Esteves repeated April 2004.

Councilmember Polanski said she wanted to respond to Councilmember Gomez and stated she did receive a telephone call from Jay Peebles of the Milpitas Post and she at no time violated the Brown Act; Mr. Peebles asked questions about it and she explained to him that she could not violate the Brown Act; and the only thing she said was that Councilmember Livengood was not present at the entire Closed Session when she was asked about his having to leave the Closed Session, and she said Councilmember Livengood was not present during the entire Closed Session.

Mayor Esteves called for the question.

VOTE ON MOTION: Ayes: 3 Noes: 1 (Gomez) Absent: 1 (Livengood)

ADJOURNMENT

Mayor Esteves adjourned the Council meeting/workshop at 7:34 p.m.

Gail Blalock
City Clerk

The foregoing minutes were approved by the City Council as submitted on October 19, 2004.

Gail Blalock
City Clerk

Date

APPROVED MINUTES
CITY OF MILPITAS

Minutes:	Special Meeting of Milpitas City Council
Date of Meeting:	October 6, 2004
Time of Meeting:	6:30 p.m.
Place of Meeting:	City Hall Council Chambers, 455 E. Calaveras Blvd.

ROLL CALL

Mayor Esteves called to order the Special meeting of the Milpitas City Council at 6:30 p.m. Present were Mayor Esteves, Vice Mayor Dixon, and Councilmembers Gomez, Livengood, and Polanski.

PLEDGE

Mayor Esteves led the Council and audience in the Pledge of Allegiance.

CITIZENS FORUM

Mayor Esteves invited members of the audience to address the Council on any subject not on the agenda, requesting that remarks be limited to two minutes or less.

There were no speakers.

AGENDA

MOTION to approve the agenda as submitted.

M/S: Livengood, Dixon.

Ayes: 5

**ETHICS PROGRAM
FOSTERING PUBLIC
TRUST**

City Manager Thomas Wilson informed the Council that Dr. Shanks called to say he was making his way to Milpitas from San Jose. Mr. Wilson suggested the Council look at the attachment Dr. Shanks had prepared and review the Goals and Ground Rules listed on the attachment.

Acting Planning & Neighborhood Preservation Director Tambri Heyden said this meeting was the 60-day follow-up to see how well the Council had done in achieving the goals set at the previous session. Mr. Heyden reviewed the Goals to assess Council role-modeling over the last sixty days, apply the ethical decision-making method to real-world Council cases, practice communicating ethics, and identify next steps and need-to-know skills and information.

Ms. Heyden began the workshop with some warm-up exercises developed by Dr. Shanks, who took over upon his arrival.

At 6:58 p.m. the Council left the dais and moved to the tables set in the front of the Council Chambers to continue the workshop facilitated by Dr. Shanks.

ADJOURNMENT

Mayor Esteves adjourned the Council meeting/workshop at 8:42 p.m.

Gail Blalock
City Clerk

**The foregoing minutes were approved by the City Council as submitted on
October 19, 2004.**

Gail Blalock
City Clerk

Date

APPROVED MINUTES
CITY OF MILPITAS

Minutes:	Regular Meeting of Milpitas City Council (Including Joint Meeting with Redevelopment Agency)
Date of Meeting:	October 5, 2004
Time of Meeting:	6:00 p.m. (Closed Session) 7:00 p.m. (Regular Session)
Place of Meeting:	Milpitas City Hall, 455 E. Calaveras Boulevard

ROLL CALL

Mayor Esteves called to order the regular meeting of the Milpitas City Council at 6:00 p.m. Present were Mayor Esteves, Vice Mayor Dixon, and Councilmembers Polanski and Gomez (arrived 6:01 p.m.). Councilmember Livengood was not present for the Closed Session.

CLOSED SESSION

Mayor Esteves publicly stated the Council would convene in Closed Session to discuss the following items listed on the agenda and the supplemental agenda:

1. Conference with Real Property Negotiator

(Pursuant to Government Code Section 54956.8)

Property: Vacant Property N. Main St., south of SR237 W/B off-ramp & Main (APN 022-08-003)

Negotiating Parties: City of Milpitas/Milpitas Redevelopment Agency and Kathleen Cardoza

Agency Negotiators: Thomas J. Wilson and Blair King

Under Negotiation: Terms and conditions for acquisition of property

2. Conference with Legal Counsel - Anticipated Litigation

(Pursuant to Government Code Section 54956.9[b](1) and (2))

Significant Exposure to Litigation – One Case

3. Conference with Legal Counsel: Existing Litigation

(Pursuant to Government Code Section 55956.9[a])

City of Milpitas v. RRM Design Group, et al (and Related Cross-Actions)

Alameda County Super Court No. RG03088899

Mayor Esteves adjourned the meeting to Closed Session at 6:02 p.m.

The City Council meeting reconvened at 7:00 p.m. with Mayor Esteves presiding and Vice Mayor Dixon and Councilmembers Livengood, Polanski, and Gomez present.

**CLOSED SESSION
ANNOUNCEMENTS**

City Attorney Mattas announced there were three items on the Closed Session; regarding the matter of the City of Milpitas vs. RRM Design Group, the Council was provided an update and no action was taken; in the matter of the Real Property Negotiations, the Council was also provided an update and direction was provided to staff on that issue; with regard to the Closed Session matter related to Anticipated Litigation, the Council was advised of issues related to a potential conflict issue, and the Council directed that additional information be sought with a report back to the Council at a Special Meeting next Tuesday, 6:00 p.m., October 12, 2004.

PLEDGE

Members of Troop No. 92 led the Council and audience in the Pledge of Allegiance.

MINUTES

There were no minutes to approve.

SCHEDULE

Vice Mayor Dixon reported the October 27, 2004, (3:00 p.m.) Silicon Valley Rapid Transit meeting had been cancelled.

MOTION to approve the Schedule of Meetings as amended.

M/S: Gomez, Livengood.

Ayes: 5

PRESENTATIONS

Mayor Esteves read a proclamation declaring October 17-23, 2004, as “Teen Read Week” and presented it to Don Phillips, Team Services Librarian at the Milpitas Library.

Mr. Phillips thanked the Council for its support throughout the years and recognition of the importance of reading for pleasure and announced that October 4, 2004, was the last Monday the Library would be open for public use; he hoped, with the support of the community, the Library would be able to serve Milpitas fully once again. Mr. Phillips introduced some teens that were frequent Library visitors and volunteers and each one spoke briefly about what they liked to read.

Mayor Esteves read a proclamation declaring October 6, 2004, as “Walk to School Day,” and presented it to Janice Nadal of the City’s Transportation Planning Division.

Mayor Esteves read a proclamation proclaiming October 3-9, 2004, as “Fire Prevention Week,” reminded everyone to test their fire alarms, and presented it to Fire Chief Bill Weisgerber and Fire Marshall Patti Joki. Fire Marshall Joki informed the audience of what the Fire Department was doing to promote fire safety and fire awareness and reminded everyone that when they set their clocks back at the end of the month, to also replace their smoke detector batteries.

Mayor Esteves asked Vice Mayor Dixon to join him at the podium. Mayor Esteves thanked Huizhou Vice Mayor Zhida Xu and the Huizhou Municipal People’s Government delegation for visiting Milpitas to present the Sister Cities agreement. Mayor Esteves said this important agreement incorporated the principles of the 1972 Sino-U.S. Shanghai Communiqué, presented jointly by the leaders of the People’s Republic of China and the United States of America; the City of Milpitas acknowledged and affirmed the 1972 Shanghai Communiqué today as the Mayor and Vice Mayor Dixon sign the agreement. Mayor Esteves further stated the 1972 Shanghai Communiqué promotes, and Milpitas supports, mutual understanding, expansion of official and non-governmental exchanges, and friendship through peace, stability and prosperity in the Asia-Pacific Region and the world. Mayor Esteves said the approved Memorandum of Understanding would begin the Sister City relationship from April 28, 2004, through April 28, 2006. Mayor Esteves acknowledged the Milpitas Sister Cities Commission and introduced those members who were present.

Vice Mayor Xu addressed the Council and audience with the assistance of Delegation Interpreter Catherine Chen. Vice Mayor Xu introduced the members of the delegation.

Vice Mayor Dixon welcomed the delegation and thanked them for taking this opportunity to grace Milpitas with their presence. Vice Mayor Dixon said Milpitas is a very culturally rich community and described the exchange as a bountiful harvest.

Mayor Esteves and Vice Mayor Dixon, along with Vice Mayor Xu signed the agreement, which had been previously signed by Huizhou Mayor Huang Yebin.

RECESS

Following an exchange of City gifts and photographs, Mayor Esteves called for a 15-minute recess for a reception in the ground floor rotunda area. Mayor Esteves recessed the City Council meeting at 7:47 p.m.

The City Council meeting reconvened at 8:05 p.m. with all members present.

CITIZENS FORUM

Mayor Esteves invited members of the audience to address the Council on any subject not on the agenda, requesting that remarks, including any visual or technology-assisted presentations of any kind, be limited to two minutes or less, and noted that the City Clerk would be using the timer and when the red light at the podium came on, two minutes would be up.

Loni Knight, a Milpitas resident, said she was the June 2004 co-chair for the Milpitas Relay for Life and had been involved in the Relay for the past five years; thanked the City of Milpitas for all its support for the event since its beginning, and informed the Council that a plaque would be presented to the City at the Council's next meeting thanking the City Council for its support. Ms. Knight thanked the Milpitas Police Officers Association (MPOA) for being the Relay's single largest fund raising organization, for providing many support services for the event, and for providing all the water for the event. Ms. Knight also thanked the Firefighters for the support services they provided for the entire event. Ms. Knight said the Relay was about fundraising to fund research, to find a cure for Cancer, and to end the suffering for our friends and loved ones and thanked all the people and organizations for their support of the event.

Judy Lowry said she had been a recipient of these funds as she had been battling Cancer for three years; had been involved in the Milpitas Relay and felt 2004 had been the most successful year; and none of the other Relays that she had been to had the support that the Milpitas community gave. Ms. Lowry further stated she wanted to publicly thank the City for its support and the MPOA and the Milpitas Firefighters Association for all the support they have given to the event. Ms. Lowry shared that she was one of the Cancer survivors who was being helped, gave examples of how the MPOA and Firefighters helped her as an individual, stated that Milpitas was a very special place, and said that the money raised had given survivors like herself hope for the future.

Joselito Abelardo, Community Advisory Commissioner and member of the Steering Committee for the Milpitas Ethics Program, referring to Craig Ranker's comments at the previous Council meeting regarding rolling out the Ethics 1st Program, reported that the Ethics 1st Program was being aggressively introduced to Milpitas residents; shared the brochure that was being distributed, and stated that the Public Service Announcement was being aired regularly. Mr. Abelardo further reported the Web site included the Ethics 1st guidelines, which was a complete copy of the Ethics Code along with a complaint form that could be printed out and submitted to the City to begin the complaint evaluation process, and the next step would be promoting the League of Women Voters Final Word Candidates Forum on Saturday, October 30, 2004, beginning at 4:00 p.m. in the Milpitas Council Chamber, and invited everyone to attend.

ANNOUNCEMENTS

Councilmember Polanski reported she attended the 10th Anniversary Celebration at the Great Mall and had received a letter from the League of California Cities thanking her for her participation and that of the City in the Ethics Workshop.

Vice Mayor Dixon reported she had attended the Joint Powers Authority (JPA) Library Elections Committee meeting, and they were considering going back to the public to determine if the Parcel Tax, which expires June 30, 2005, could be settled; reminded everyone that all the JPA Libraries would be closed on Mondays; reported that last Monday, she and the Mayor along with the City Manager and Assistant City Manager met with representatives from the Silicon Valley Manufacturing Group to discuss concerns and issues related to the City of Milpitas -- bringing BART to Milpitas, about the \$500,000 given several years ago to the Manufacturing Group Housing Trust, and about the good things that were happening in Milpitas, that Milpitas was a very progressive City with the funding to achieve many of its goals, and about the Midtown Plan, which included the Library, the Senior Center, the Health Center, and all the Streetscape improvements.

Vice Mayor Dixon, addressing the earlier Cancer discussions, stated she was a financial backer of the Los Isabella's, which focused on Breast Cancer among Hispanic women who have a very high percentage of Breast Cancer and announced that on October 7, 2004, at 93 Devine Street, Suite 100, in San Jose, a Mexican Jewelry Show would be on display and the money raised would be given to Los Isabella's fight for Breast Cancer. Vice Mayor Dixon also announced the Santa Clara County Library System has something called "Racing to Literacy" and a celebration and silent auction would take place Thursday, November 4, 2004, at something called "Bring Me a Book Foundation," from 5:30 p.m. to 9:00 p.m. at the Vision Literacy, 540 Valley Way, Building 4 in Milpitas.

Mayor Esteves thanked the India Community Center for sponsoring a Bridal Cultural Fair and announced the 13th Annual Milpitas Autumn Festival, a Vietnamese Autumn Festival, would occur on October 10, 2004, from 1:00 p.m. to 8:00 p.m. at the Milpitas Community Center.

ANNOUNCEMENT OF CONFLICTS OF INTEREST

City Attorney Steve Mattas stated that under the recently adopted Open Government Ordinance, the Council uses this part of the meeting to identify any potential personal or financial Conflict of Interest they may have with regard to items on this evening's agenda. Mr. Mattas reminded the Council that a format had been sent that they may wish to use in the future and would be included in future Council agenda packets.

Mr. Mattas inquired if any member of the Council had a potential conflict of interest for an item on this evening's agenda. Mayor Esteves, Vice Mayor Dixon, and Councilmembers Livengood and Polanski responded no. Councilmember Gomez was not in his seat.

MOMENTS OF REFLECTION

Mayor Esteves explained that this item pertained to the Milpitas Code of Ethics, was a time of reflection on the Council's monitoring how well it was doing and to what extent Have Councilmembers' deliberations and action, individually or as a team, strengthened public trust, was an opportunity to respect and celebrate the City's accomplishments in practicing the values, to be absolutely honest with one another about things that mattered, and to offer any constructive feedback, with respect.

Councilmember Polanski, following-up on what Commissioner Abelardo stated earlier, commented on the second issue of the City Newsletter, which she thought was excellent and took teamwork to put together, and said she felt that the City staff who worked on the City Newsletter, Gail Blalock, Marie Hua, Kathy Margrave, Cindy Maxwell, Lynette Wilson, and Kathy Ynegas, along with Ealasaid Haas and all of the people who contributed photographs, did an excellent job, and she had received some wonderful comments about the Newsletter and the information it contained.

Mayor Esteves stated he had been asked for extra copies of the Newsletter and they could be found at City Hall. The Mayor acknowledged that an important section was the inclusion of Ethics 1st; and he hoped everyone would keep the brochure and post it on their wall to remind them that Ethics was a way of living. Mayor Esteves requested the public be watchful of ethical campaign processes during this election season.

Mayor Esteves questioned, based on this reflection, if there were any practical steps that should be taken to build the public's trust.

Vice Mayor Dixon commented that she felt it would be more appropriate to discuss this after the Council's meeting on Wednesday, October 6, 2004, (Ethics Training) when the 60-day update would be presented as it would provide the opportunity to discuss things in detail, and she would reserve any comments until after that meeting.

Mayor Esteves informed the audience that the Ethics Training meeting scheduled for Wednesday, October 6, 2004, would take place in the Council Chambers beginning at 6:30 p.m., and invited the public to watch and observe.

AGENDA

MOTION to approve the agenda as submitted.

M/S: Livengood, Dixon.

City Attorney Mattas stated there was one change to the agenda and asked that Item 7 (Report on Review of Potential Conflict of Interest Issue) be removed from the agenda and included on the Special Meeting agenda for October 12, 2004.

Councilmember Livengood said he accepted the change.

VOTE ON MOTION AS AMENDED to remove Item 7 from the agenda: Ayes: 5

CONSENT CALENDAR

Mayor Esteves inquired if anyone wished to make any changes to the Consent Calendar. City Manager Wilson, referring to Item 5 (Mayor's Reappointments), stated the item would be continued to a future meeting date.

City Manager Wilson, referring to Item 8 (Approve the Recommendation to Set a Public Hearing on November 2, 2004, to Discuss the Facilities Naming Subcommittee's Recommendations to Honor Dr. Martin Luther King, Jr. and Cesar Chavez), stated staff would like to substitute the date; it was noticed for inclusion on the Council Calendar on November 2, 2004; however, staff would like the date changed to December 7, 2004. Councilmember Livengood inquired if anything had been noticed. City Manager Wilson stated it had not yet been noticed. Councilmember Polanski said she was also going to request Item 8 be removed for discussion and would still like it removed for discussion even with staff's request.

MOTION to approve the Consent Calendar, items with asterisks on the agenda, as amended by the removal of Item 8 and the continuation to a future meeting of Item 5, in accordance with the staff recommendations.

M/S: Livengood, Dixon.

Ayes: 5

***5. Reappointments**

Continued to a future date.

***9. Odor Control Update**

Noted receipt and filed the Odor Control Comprehensive Action Plan.

***10. Apton Plaza Project Land Exchange**

Authorized the City Manager to execute the Environmental Remediation Agreement associated with the Apton Plaza project land exchange.

***11. Recreation Assistance Program**

Approved \$2,591.38 proceeds from Circus Chimera tickets sales to be allocated to the Recreation Services R.A.P. Program.

***13. Memorandum of Understanding Laborers' International Union of North America**

Adopted Resolution No. 7476 approving the Laborers' International Union of North America (LIUNA) Memorandum of Understanding for the period July 1, 2004 through December 31, 2005.

***14. West Yost & Associates (Project No. 7098)**

1. Authorized the City Manager to execute the agreement with West Yost & Associates for South Milpitas Water Line Replacement (Project No. 7098) in the amount of \$294,632, subject to approval as to form by the City Attorney.
2. Approved budget appropriation in the amount of \$100,000 from the Water Fund to the South Milpitas Water Line Replacement (Project No. 7098).

- *15.
Art Bakos Contract** Authorized the City Manager to execute a professional services contract with Art Bakos for various Capital Improvement Projects, based on time and materials not to exceed \$25,000, subject to approval as to form by the City Attorney.
- *16.
Senior Nutrition Contract** Approved the third amendment to the senior nutrition contract between the County of Santa Clara (Social Services) and the City of Milpitas for July 1, 2004, through June 30, 2005. The total amount of this contract is \$122,759, with the City and County each responsible for one half of the amount or \$61,380, not to exceed \$3.64 per meal. Sufficient funds have been approved in the FY 2004/05.
- *17.
Harris & Associates
(Project No. 8153)** Authorized the City Manager to execute the agreement amendment with Harris and Associates for the Milpitas Library Project Utility Improvements (Project No. 8153) in the amount not to exceed \$30,000 subject to approval as to form by the City Attorney.
- *18.
ADA Sidewalk Ramps – 2005
(Project No. 4226)**
 1. Approved new CIP Project No. 4226 ADA Sidewalk Ramps – 2005.
 2. Appropriated \$40,000 from the street fund to be applied to this new project.
- *19.
Miscellaneous Vendors** Approved the purchase request for \$8,373.75 to JAM Services, Inc. for the purchase of two traffic signal battery backup systems for the Bellew/McCarthy and Bellew/Cypress intersections for the Public Works Department. Street Maintenance staff will install the systems. (Funds are available from the Traffic Signals Modifications [Project No. 4167] project budget for this purchase.)

PUBLIC HEARINGS

- 1.
USA Properties PUD
1696 South Main Street** City Manager Wilson requested the Council continue to October 19, 2004, this item regarding USA Properties Planned Unit Development No. PD2004-1 and Use Permit No. UP2003-37 for property located at 1696 South Main Street.
- Mayor Esteves opened the public hearing and invited comments. There were no comments.
- MOTION to continue the public hearing for the Planned Unit Development No. PD2004-1, "S" Zone Approval No. SZ2003-11 and Use Permit No. UP2003-37 for the property located at 1696 South Main Street (APN 86-34-017, -019, and -020) to October 19, 2004.
- M/S: Dixon, Polanski. Ayes: 5
- 2.
Housing and Urban
Development Storm Grant
Final Report** City Engineer Mike McNeely stated the subject of this Federally required hearing was the United States Department of Housing and Urban Development (HUD) Storm Grant of approximately \$1.32 million the City had received for reimbursement of winter 1998 storm damage; the total City cost that had been accrued from the 1998 event was approximately \$2.95 million; \$2.6 million had been reimbursed through Federal and State grants; and grant monies had been received for emergency response, debris removal, cost recovery, flood-proofing, and for the major work on Calaveras Road repair. Mr. McNeely further stated that an audit had recently been performed by the State, and although the report had not yet been received, staff had every reason to believe that the City passed with flying colors. Mr. McNeely pointed out that the forms the Council had received in their packet were not applicable for a post event reimbursement grant, they were more like Community Development Block Grant (CDBG) forms; however, it was the form the City was required to use; and recognized members of staff who had worked on the grants, particularly Felix Reliford, Marilyn Nickel, and Elena Chin.
- Vice Mayor Dixon requested that recognition of staff's work on the grants be included in the Council's Reflections. Mr. McNeely reflected that through diligent staff work and with the

assistance of the Santa Clara County Water District (SCCWD), the City received a Cost Rating of 5 in the National Flood Insurance rating, which benefited Milpitas citizens from approximately \$200,000 to \$300,000 per year in reduced Flood Insurance premiums.

Mayor Esteves opened the public hearing and invited comments. There were no requests.

MOTION to close the public hearing.

M/S: Dixon, Polanski.

Ayes: 5

MOTION to approve the submittal of the Final Annual Report.

M/S: Dixon, Livengood.

Ayes: 5

**3.
Street Vacations
For Roadway Purposes
(Project No. 3144 & CIP 8153)**

City Engineer McNeely reported the subject of the hearing was the proposed resolution to abandon portions of Weller Lane, Railroad Avenue, and Winsor Street for Roadway Purposes (Project No. 3144 and CIP 8153) and further reserve those areas for utility easement purposes. Mr. McNeely gave a PowerPoint presentation of the proposal and stated the Council had approved a Resolution of Intention on the matter on August 17, 2004, the required notices had been posted and sent, and the Planning Commission found the proposals consistent with the City's General Plan and was consistent with the proposed Redevelopment Plan in the area, including the Library.

Mayor Esteves opened the public hearing and invited comments. There were no comments.

MOTION to close the public hearing.

M/S: Gomez, Livengood.

Ayes: 5

MOTION to adopt Resolution No. 7475 vacating those portions of North Main Street/Railroad Avenue, Weller Lane and Winsor Street for roadway purposes and reserve the same area for public utilities.

M/S: Livengood, Polanski.

Ayes: 5

**4.
Amendments to
Zoning, Sign, & Neighborhood
Beautification Ordinances**

Acting Planning Director Tambri Heyden stated on May 18, 2004, staff presented to the Council a proposal to extend the City's Code Enforcement Program; in order to implement the Program, there were various amendments to the Neighborhood Beautification Ordinance, Sign, and Zoning ordinances that needed to be prepared; staff had been directed to move forward and prepare the recommended code amendments, which involved the Community Advisory Commission (CAC), the Economic Development Commission (EDC), and the Planning Commission to provide input above and beyond the normal process for notifications; staff utilized the opportunity to combine some other amendments necessary for the Sign Code; the CAC had reviewed the amendments and voted to recommend approval with no changes, the EDC had also reviewed the amendments and requested additional time; at the Planning Commission meeting, the Planning Commission did not take action on the amendments and requested staff form a Task Force to include a greater representation from the community before bringing it back to the Planning Commission (this was in addition to the groups that were represented and requested by the Council); and staff concurrently met with NAIOP, the Santa Clara Valley Board of Realtors, and the Chamber of Commerce.

Ms. Heyden said that because the packaged amendments dealt with two somewhat distinctive and different issues (Code Enforcement and the Sign Code), the Chamber of Commerce had recommended two different task forces be formed, which staff thought was a good idea as there may be individuals who may be interested and knowledgeable with one topic and not the

other; a list of names had been submitted by the Chamber of Commerce and NAIOP; and if this was done, it could be moved along expeditiously and probably generate more interest.

Ms. Heyden summarized that staff was recommending two distinct focus groups be formed to review the amendments, staff would bring it back to the Council when the process was concluded; this had been an advertised public hearing, and staff would like to start over with the process, re-advertise it, and come back to the Council at an appropriate future date.

Mayor Esteves said he thought the plan was to have only one focus group to be the ad hoc task force for the Sign Ordinance and at the same time a Code Enforcement Standing Committee and inquired why staff was suggesting splitting it into two. Ms. Heyden said it had been the recommendation of the Planning Commission to form a task force that was more community based and broader and somewhat large; it had been the Chamber of Commerce's recommendation to split it into two separate groups, given the difference in issues; some folks may have more knowledge and expertise and be able to feel more comfortable and willing to participate and speak on the one issue rather than the other; she felt it could be accommodated, that it would work quite well, and that more interest would be generated.

Mayor Esteves stated his concern was the potential differences in the two groups; after they come up with their own recommendations, inquired if there would be another set to reconcile the two to make sure they jive together as a first step or second step. Ms. Heyden stated that could be done; it would probably be a process that staff could take on to bring the two recommendations back together as one package rather than separating them out; and after that was done, it would go to the Planning Commission, which was general procedure prior to being brought back to the Council.

Vice Mayor Dixon, as liaison to the Chamber, said she had listened to their concerns and liked the idea of the Chamber being able to participate along with the Economic Development Commission; felt it was very critical; they had been given the path and the charge to go out and look at a myriad of things that had to do with not only attracting business, but retaining the businesses; she liked the idea as long as there was a mechanism for a time line to keep them on track and liked the idea of breaking off into two different groups.

Mayor Esteves inquired if staff had an estimate of how long it should be. Ms. Heyden responded that with formation of two different committees and parallel tracking them, depending on how quickly the group could get back together, she felt it could be done in 1-1/2 months. Mayor Esteves inquired how members would be selected and how they would be classified. Ms. Heyden said the Chamber of Commerce and NAIOP had met once and offered to provide a list of names, which the Council now had; staff was ready to go ahead and utilize those names and coordinate setting up a first meeting in the very near future. Mayor Esteves inquired as to what the criteria would be. Ms. Heyden stated staff was interested in looking at people that represented the business side, particularly the Sign Code; individuals who represented the various commercial sectors (i.e., restaurants, Mall representation, commercial space, etc.); and on the Code Enforcement side, staff was interested in people who have requested staff look at transitioning from complaint driven to pro-active. Mayor Esteves inquired if it would be open for other members. Ms. Heyden responded absolutely and staff currently had a list of twelve names. Mayor Esteves suggested other industries like real estate.

Mayor Esteves opened the public hearing and invited comments.

Frank De Smidt, Government Affairs Committee with the Milpitas Chamber of Commerce, stated he was perplexed; he hoped the full Council had received the Chamber's letter regarding the issue because it did not say anything about breaking anything up into two groups; the Chamber had keen interest (in both enforcement and in the sign issue); and the Chamber wanted to be involved in all of them.

Mayor Esteves said the Chamber could still be involved in both. Ms. Heyden stated if somebody wanted to sit in both groups, that would be fine; and the letter that was sent may have been misinterpreted.

Ray Maglalang reported the topic had been discussed at the Economic Development Commission, and he was concerned about being required to get a permit to have directional signs (i.e., open house signs); expressed concern that there was no written policy; said he would like not to have that requirement; and stated it would be further discussed at the Economic Development Commission.

MOTION to close the public hearing.

M/S: Polanski, Livengood.

Ayes: 5

Mayor Esteves inquired when the Economic Development Commission would come to the Council. Ms. Heyden stated the next Economic Development Commission meeting was Monday, suggested getting the Economic Development Commission recommendations and forwarding them to the Task Force.

City Manager Wilson stated the Economic Development Commission met monthly and staff would have to see how they could accommodate within their meeting schedule; it may work out just fine; by the time the Task Force completes its work, it's another month, and there would be an Economic Development Commission meeting; and it would all come through the Commissions for recommendation, go to the Planning Commission, and then back to the Council; it would be done quickly, efficiently, and let everybody have a shot at it.

Councilmember Polanski commented that she had the letter from the Chamber of Commerce and could see the confusion as she, too, thought the Chamber was asking for two groups. Councilmember Polanski said if a thorough review with input from the various groups was desired, she thought two groups was the way to go because it would be a lot of work for just one group.

MOTION to establish two focus groups with representatives to review the amendments to the Sign Ordinance and to review enforcement matters before bringing them back to the Planning Commission and Council for public hearings.

M/S: Polanski, Livengood.

Ayes: 5

JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. CALL TO ORDER

Mayor Esteves called to order the regular meeting of the Milpitas Redevelopment Agency, meeting jointly with the City Council, at 8:52 p.m.

RA2. ROLL CALL

Present were Mayor Esteves, Vice Mayor Dixon, and Agency/Councilmembers Livengood, Polanski, and Gomez.

RA3. MINUTES

There were no minutes for approval.

RA4. AGENDA

MOTION to approve the agenda as submitted.

M/S: Dixon, Polanski.

Ayes: 5

RA5. LIBRARY DESIGN UPDATE

Project Manager Mark Rogge reported the Library project was right on schedule, the budget in the Council's agenda packet had more detail, there were minor expenditures so far, and

(PROJECT No. 8162)

the Conceptual Design was a work in progress based upon the Council's approved Library Building Program and the Needs Assessment. Mr. Rogge gave a PowerPoint presentation outlining the Library Design progress; stated part of the work going on was preparing the property, including working on property acquisitions, relocating the Corp Yard, and the street vacation; the architects were looking at each of the aspects of how the natural elements could be best used (i.e., the sun, wind, looking at the desirable north light exposures, and possible hillside views); and another piece being evaluated was seamlessly integrating the power generation to the building for energy efficiency.

Mr. Rogge said staff was moving forward with the Concept Development Plan, would be meeting with the Subcommittee to go over layouts, and would be returning to the Council after the next Subcommittee meeting.

MOTION to note receipt and file the progress report on the library design.

M/S: Polanski, Dixon.

Ayes: 5

**RA6.
ADJOURNMENT**

There being no further Redevelopment Agency business, Mayor Esteves adjourned the Redevelopment Agency meeting at 8:57 p.m.

The City Council meeting continued.

REPORTS OF OFFICERS AND BOARDS

**6.
Milpitas High School
Monday Library Hours**

Principal Administrative Analyst Cindy Maxwell, referring to Vice Mayor Dixon's announcement that the Milpitas Library would be closed on Mondays beginning October 11, 2004, stated staff had been directed at the Council's last meeting to do a number of things, and staff was bringing forward one of those items, which was to look at the impact of closing the Library on Monday on the groups that would be most affected (students). Ms. Maxwell reported at a recent City/School coordination meeting, it was suggested by Vice Mayor Dixon that staff look into using the Milpitas High School Library on Monday afternoons and that Vice Mayor Dixon's suggestion had worked out.

Ms. Maxwell said staff was presenting an agreement with the School District that would open the Milpitas High School Library every Monday, except school holidays, from 4:00 p.m. to 9:00 p.m., to all public; although the material and technology in the High School library could be used, no one except High School students would have borrowing privileges; the School District would provide a librarian and the City would reimburse the School district for staffing, security, and custodial services for a not-to-exceed cost of \$18,000. Ms. Maxwell noted the Council had received a slightly revised agreement and pointed out some of the minor changes that had been made.

Vice Mayor Dixon said she was pleased that this came about so quickly and was proud that another partnership with the MUSD had been achieved and that the kids wouldn't have to suffer.

Mayor Esteves thanked the supporters of Measures H and I, which provided the Transient Occupancy Tax (TOT) revenue that could now be used for Library hours.

Councilmember Livengood said this was a positive step but wanted to reiterate that he did not think the decision that was made to close the libraries across the County on Mondays was a good decision; he felt the JPA had other options it did not exercise. Councilmember Livengood stated he was appreciative of the School/City Subcommittee for its work and felt this was a positive step, although he felt that ultimately the Milpitas Library should have been open on Mondays.

Mayor Esteves agreed with Councilmember Livengood but felt this backup position was good in that students' library hours would not be disturbed and staff should pursue the JPA to open the Milpitas Library.

Ms. Maxwell reported that the JPA had indicated that they would not consider any proposal to have any of the nine libraries open on Monday because they wanted it to be consistent throughout the JPA; however, the City's letter did request information on the cost to make up the lost hours throughout the week; and staff anticipated some numbers would be coming soon.

Mayor Esteves stated Milpitas was also exploring possibilities or ways that it could support the Library staying open.

City Manager Wilson said staff was considering all the items the Council indicated, including an evaluation of the City's relationship to the JPA and staff would be making periodic reports to the Council as information was received.

Ed Connor stated the real question was that of Magellan; letting Magellan elements into the School District and into the School; realized it was covered by the presence of security but felt it was something that needed to be taken into consideration on the new Library; suggested that where the Magellan people were located within the City of Milpitas and how it related to the Library be taken into consideration, and where the Magellan element was located in relation to where the High School was and the Main Library.

MOTION to:

1. Authorize the City Manager to execute an agreement for services, at a not to exceed amount of \$18,000, with the Milpitas Unified School District, subject to approval of form by the City Attorney, to provide study space at the Milpitas High School Library on Monday afternoon and evenings through June 13, 2005, and
2. Approve a budget appropriation of \$18,000 from the Library TOT Fund.

M/S: Dixon, Polanski.

Ayes: 5

**8.
Dr. Martin Luther King, Jr.
& Cesar Chavez Recognitions**

Councilmember Polanski said her reason for pulling this item from the Consent Calendar was she felt if a public was going to be set to discuss facilities naming the Subcommittee's recommendations to honor Dr. Martin Luther King, Jr. and Cesar Chavez, it should be announced as there were a great deal of people who watch the meeting from home; she knew the recommendation was to change the public hearing date from November 2, 2004, to December 7, 2004, and was concerned that during the Thanksgiving/Christmas holiday season people had a lot of other things on their minds; she believed December 7, 2004, was the date the election would be confirmed and the Mayor and Councilmembers would be sworn in; believed there should be public input and something of this nature should go to all of the City's commissions for review and then have a public hearing; as the Library would not be built for several years, there was no rush to name it; and suggested a public hearing be held after all the commissions had an opportunity to review the material.

Mayor Esteves said he thought the commissioners should be asked if there was an interest as not everybody may have an interest. Councilmember Polanski said the naming of the Milpitas Library was pertinent to all of Milpitas' commissioners; felt it was something that staff could be asked to agendaize for the meeting, and if they wished to discuss this, they could. Mayor Esteves said that was what he meant.

Councilmember Livengood said he did not have a problem if the Council wanted to wait until the new Council was sworn in (i.e., January or February).

Mayor Esteves suggested it be brought back to the Council prior to March 31, 2005.

City Manager Wilson suggested staff agendize this for all the Commissions' consideration as soon as possible, report back to the Council after Commission reviews, and then the Council could set a date for a public hearing.

MOTION to direct staff to agendize the matter for all City Commissions to discuss the Facilities Naming Subcommittee's recommendations to honor Dr. Martin Luther King, Jr., and Cesar Chavez and report back to the Council.

M/S: Livengood, Gomez.

Ayes: 5

ORDINANCE

12. Employee Salary & Total Compensation Ordinance No. 266

City Attorney Mattas reported this was a sunshine type ordinance that would specify that employee salary information, including the compensation items listed, would be a public record and would be available upon request; the ordinance was sent to the employee groups and no comments in opposition to the draft ordinance had been received.

Councilmember Gomez, referring to time line terms, inquired how long it should take once a request was made. City Attorney Mattas said staff would have to produce the data; if the request was for a calendar year, it would be produced as quickly as the Finance Department could produce it, which would be within the initial 10 days that was authorized; and once it was produced the first time, then it would be readily available.

City Attorney Mattas read the title of Ordinance No. 266 adding Chapter 320 to Title I of the Milpitas Municipal Code designating City employee salary information by title as a public record.

MOTION to waive reading beyond the title.

M/S: Gomez, Livengood.

Ayes: 5

MOTION to introduce Ordinance No. 266.

M/S: Gomez, Livengood.

Ayes: 5

ADJOURNMENT

There being no further Council business, Mayor Esteves adjourned the City Council meeting at 9:14 p.m.

Gail Blalock
City Clerk

**The foregoing minutes were approved by the City Council as submitted on
October 19, 2004.**

Gail Blalock
City Clerk

Date

APPROVED MINUTES
CITY OF MILPITAS

Minutes:	Regular Meeting of Milpitas City Council (including Joint Meeting with Redevelopment Agency)
Date of Meeting:	September 21, 2004
Time of Meeting:	6:00 p.m. (Closed Session) 7:00 p.m. (Regular Session)
Place of Meeting:	Milpitas City Hall, 455 E. Calaveras Boulevard

ROLL CALL

Mayor Esteves called to order the regular meeting of the Milpitas City Council at 6:00 p.m. Present were Mayor Esteves, Vice Mayor Dixon, and Councilmember Polanski. Councilmember Gomez arrived at 6:01 p.m. Councilmember Livengood was absent.

CLOSED SESSION

Mayor Esteves publicly stated the Council would convene in Closed Session to discuss the following items listed on the agenda.

1. Conference with Legal Counsel: Existing Litigation

(Pursuant to Government Code Section 54956.9(a))

Milpitas v. Turner Construction et al., Santa Clara County Superior

Court case number CV814946, consolidated with case number 103 CV 008400

2. Conference with Real Property Negotiator

(Pursuant to Government Code Section 54956.8)

Property: Vacant Property N. Main St., south of SR237 W/B off-ramp & Main (APN 022-08-003)

Negotiating Parties: City of Milpitas/Milpitas Redevelopment Agency and Kathleen Cardoza

Agency Negotiators: Thomas J. Wilson and Blair King

Under Negotiation: Terms and conditions for acquisition of property

Mayor Esteves adjourned the meeting to closed session at 6:01 p.m.

The City Council meeting reconvened at 7:00 p.m. with Mayor Esteves presiding and Vice Mayor Dixon and Councilmembers Livengood, Polanski, and Gomez present.

**CLOSED SESSION
ANNOUNCEMENTS**

There were no Closed Session announcements.

PLEDGE

Members of Troop 92 led the Council and audience in the pledge of allegiance.

MINUTES

MOTION to approve the City Council minutes of September 7, 2004, including joint meeting with the Redevelopment Agency, as submitted.

M/S: Dixon, Polanski.

Ayes: 5

SCHEDULE

City Manager Wilson noted that the Silicon Valley Rapid Transit Corridor BART Extension Policy Advisory Board meeting scheduled for Wednesday, September 29, 2004, had been cancelled.

Vice Mayor Dixon noted the Chamber Board meeting scheduled for Thursday, September 23, 2004, would be at 7:30 a.m. not 11:30 a.m.

MOTION to approve the Schedule of Meetings as amended.

PRESENTATIONS

There were no scheduled presentations.

Mayor Esteves announced that members of the Dagupan City delegation, who had attended the recent Sister City event, were present in the audience, welcomed the delegation members, and thanked everybody involved in making the most recent Dagupan Sister City trip and its relationship a success. Mayor Esteves expressed best wishes to the Dagupan City representatives in different languages.

Vice Mayor Dixon stated the trip made quite an impact on the Milpitas community, expressed a special thanks to Dr. Halili for hosting one of the evening's events, thanked the City employees who volunteered their time for the dinner given for the delegation, and thanked the delegation for the picture.

Mayor Esteves thanked the delegation for bringing, as part of their trip, the two world-famous artists Raymond Sto. Domingo, whose work was being displayed in City Hall, and Joe Datuin, whose work had made the front page of the Milpitas Post.

Mayor Esteves introduced Mr. Lorica (former Secretary to the Mayor) and Mr. Bamba (from the Office of the Mayor).

Mr. Lorica informed everyone that the people of Dagupan sent their greetings and solicitations; that Dagupan Mayor Benjamin Lim sent his greetings and regrets that he could not be at this evening's meeting; stated the Milpitas/Dagupan Sister City MOU had been signed over a year ago, and it was the beginning of a journey of mutual understanding of each other's culture and traditions, way of life, and a way of learning our own cities; the delegation was very impressed with what they saw and experienced during the City tour that had been arranged for them on September 14, 2004; and thanked everyone for the warm reception the delegation received, stating it was something they would treasure for their lifetime.

CITIZENS FORUM

Mayor Esteves invited members of the audience to address the Council on any subject not on the agenda, requesting that remarks, including any visual or technology-assisted presentations of any kind, be limited to two minutes or less, and noted that the City Clerk would be using the timer and when the red light at the podium came on, two minutes would be up.

Commissioner Craig Ranker stated the Community Advisory Commission and its Steering Committee for the Milpitas Ethics program had been preparing to roll out the Ethics 1st program, this week Milpitas residents would be able to file an Ethics 1st Program complaint, a brochure on the program would be delivered in the City Newsletter, and presented the Public Service announcement outlining the Milpitas Ethics 1st Program, which would air on Milpitas Cable Channel 15 the week of September 27, 2004.

Rob Means spoke about the production of oil, the cost per barrel projections; and stated this information should be kept in mind when considering transportation issues.

ANNOUNCEMENTS

City Manager Wilson introduced Assistant City Attorney Peter Spoerl.

Vice Mayor Dixon stated the Library Advisory Commission (LAC) had discussed the issue of the up and coming closure of the Library on Mondays, beginning October 11, 2004, and the LAC was inclined to support the JPA in its efforts to close the Library on Mondays, hoping to get the message across to the community that the measure failed and there obviously would be a consequence. Vice Mayor Dixon further stated that Dr. Black and City Manager Wilson had met and were potentially looking at using the High School library for a 5-hour period on Mondays. Vice Mayor Dixon updated the Council on the VTA Marketing Package that was

in the San Jose Mercury recently; and announced that the VTA Finance Administration was bringing back the proposal to the full VTA Board the second Thursday in October. Vice Mayor Dixon thanked City staff and Chair Diane McDonough for hosting the first Economic Development Summit Meeting Public Hearing and congratulated the organizers of the AARP Sock Hop, stating a good time had been had by all.

Councilmember Polanski thanked the organizers of the AARP Sock Hop, especially Senior Advisory Commissioner Mary Banick, who helped put together the Sock Hop as part of the City's 50th Anniversary celebrations; at the September meeting of the Parks, Recreation, and Cultural Resources Commission (PRCRC), a presentation was given regarding the Senior Housing proposal going across from the new Library site on Main Street; there was also discussion about the Smith/DeVries house, and the PRCRC was in agreement with having the DeVries house, if it was moved, face the street. Councilmember Polanski stated she had attended the Valley Transportation Authority Policy Advisory Meeting, where it had been recommended that the Policy Advisory Committee By-Laws be changed; there had been a presentation from the VTA by Matt Tucker regarding Community busing and bus rapid transit; and suggested having the VTA presentation given to the Council at a future meeting. Councilmember Polanski distributed to the Council information she received at the recent California League of Cities Conference; stated she had participated in a panel discussion at the Conference concerning having a positive discussion about public service ethics and adopting a value based Code of Ethics; shared a few ethics situations that had been brought to the panel's attention; and stated there had been a lot of discussion at the Conference about Proposition 1A.

Mayor Esteves announced that this week was the celebration of Moon Festival, explaining that it was the celebration of the culture, history, and the pride of the Asian traditions and customs; and thanked sponsors of the Silent Air Show held at Ed Levin Park recently.

ANNOUNCEMENT OF CONFLICTS OF INTEREST

Assistant City Attorney Spoerl stated the Milpitas Municipal Code required that at the beginning of each City Council meeting, the City Attorney shall ask the Mayor and members of the Council to identify any personal or financial Conflicts of Interest that they may have with any items for consideration on the evening's agenda; and inquired if the Mayor or any member of the Council had any potential or actual Conflicts of Interest they wished to divulge at this time. There were none.

MOMENTS OF REFLECTION

Mayor Esteves stated the first Ethics training had been conducted on July 29, 2004; the Council had agreed to monitor how well the City was doing at role modeling the City's Values (like honesty, fairness, respect, teamwork, stewardship, and accountability); and stated this time would be used for members of the Council to comment on these Values; this time was for Councilmembers to describe to what extent they have had deliberations and actions, individually or as a team, to strengthen public trust, was an opportunity to respect and celebrate specific accomplishments in practicing the Values, to be absolutely honest with one another about things that matter, and to offer any constructive feedback with respect.

Councilmember Polanski thanked the Ethics Steering Committee for the work they had done and congratulated them on the Public Service announcement, stating it was very well done.

Vice Mayor Dixon complimented the Community Advisory Commission and the Steering Committee and the good works of Dr. Shanks; reflecting on the recent 9-11 Patriotic Remembrance event, felt the most special part was the butterflies at the end of the event when they were and they flew into the sky.

Mayor Esteves said September 11 was not just September 11, 2001, but thought it should be an important yearly event, and thanked staff for making it a very meaningful celebration. Mayor Esteves, addressing the last Council meeting, stated it had been a lengthy agenda and he wanted to thank the Council for going through the whole agenda, noting there had been

very significant agenda items. Mayor Esteves commented the objective of the "Code of Ethics was the way to build public trust."

AGENDA

City Manager Thomas Wilson, referring to Item 23 (Miscellaneous Vendors payments), reported the first payment listed an error in the amount shown, it should be \$13, 725 not \$12,725; addressing Item 7 (Planning Commission vacancy), noted that as of late last week an additional application had been received.

MOTION to approve the agenda as amended.

M/S: Gomez, Livengood.

Ayes: 5

CONSENT CALENDAR

Mayor Esteves inquired if anyone wished to make any changes to the Consent Calendar. There were no requests.

MOTION to approve the Consent Calendar, items with asterisks on the agenda, as submitted, in accordance with the staff recommendations.

M/S: Gomez, Livengood.

Ayes: 5

***4. Appointments**

Approved the Mayor's appointment of Juniel-Butler to the Alternate 2 position on the Arts Commission for a term expiring October 2006; and reappointed Bill Reisinger to a three-year term on Bicycle Transportation Advisory Commission for a term expiring August 2007.

***5. Family Child Care Assistance**

Approved grant funding from the Individual Family Child Care Assistance Fund to two family childcare providers (\$500 to Laura Cooper and \$500 to Francisca Diaz) as approved by the PRCRC:

***6. Youth Sports Assistance Grant**

Approved one individual Youth Sports Grant of \$500.00 to Martin McKeefery and three organizational youth sports assistance fund grants of \$1,000.00 each to Milpitas Youth Soccer Club, Milpitas North Little League and Milpitas Red Devils Baseball as recommended by the Parks, Recreation and Cultural Resources Commission leaving a balance of \$3,500.00 for the remainder of the fiscal year.

***8. Ethics Evaluators**

Approved Dr. Shanks' recommendation of Susan Branch and Aldyth Parie as the remaining two candidates for the Ethics Evaluation Panel, with whom staff will negotiate and enter into consultant agreements.

***9. Fee Waiver Silent Air Show**

Approved the request from the Milpitas Rotary Club to waive the Fire Inspection/Permit for Food Concession fees at the Wings of Rogallo Silent Air Show.

***10. Neighborhood Preservation Assistant Reclassification**

Adopted Resolution No. 7474 approving reclassify a regular, full-time classified employee, Mr. Christopher Schaller, from his current classification of Neighborhood Preservation Assistant to the classification of Housing and Neighborhood Specialist, effective October 3, 2004.

***11. Mobile Computing (Project No. 8093)**

Authorized the purchase of 100 mobile computing software licenses from NetMotion, Inc. to support mobile computing for both the Police and Fire Departments in an amount not to exceed \$32,000 through funds that are available in CIP 8093 (Telecommunications Infrastructure).

***12. McCarthy Ranch Pump Station Wireless Connection (Project No. 8093)**

Authorized the purchase and installation of equipment to support a wireless connection to the McCarthy Ranch Pump Station from NetVersant Northern California, Inc. in an amount not to exceed \$48,100 through funds that are available in CIP 8093 (Telecommunications Infrastructure).

- *13.
Coyote Creek Trail Reach 1
(Project No. 4206)**
- Authorized the City Manager to execute a Joint Use Agreement amendment with Santa Clara Valley Water District for Coyote Creek Trail Reach 1 (Project No. 4206), subject to approval as to form by the City Attorney.
- *14.
600 Evans Road
(Project No. 2285)**
1. Approved public improvement plans consisting of curb and gutter, pavement, street, lights signage and striping, fire hydrant, storm drain, sewer service, and water services along frontage of Evans Road.
 2. Approved the Permittee Dedication and Improvement Agreement.
 3. Authorized the City Manager to execute the same, subject to the approval as to form by the City Attorney.
- *15.
Pedestrian/Bicycle Overcrossing
(Project No. 4213)**
- Authorized the City Manager to execute the agreement amendment with Sandis Humber Jones, in the amount of \$82,075.00, subject to approval as to form by the City Attorney, to perform professional environmental consulting services within the project boundary, services to include an environmental document required to clear the Pedestrian/Bicycle Overcrossing of the Union Pacific Railroad, in the vicinity of the Great Mall (Project No. 4213).
- *16.
Hetch-Hetchy Landscape
(Project No. 5053)**
- Authorize City Manager to Execute Amendment Agreement: SSA Landscape Inc., Hetch-Hetchy Landscape Renovation (Project No. 5053) (Staff Contact: Doug Architects, DeVries, 586-3313)
- Authorized the City Manager to execute the amendment agreement with SSA Landscape Architects, Inc., in the amount of \$25,000, subject to approval as to form by the City Attorney, to further refine the concept and project scope, addressing the requirements of the updated San Francisco Public Utilities Commission (SFPUC) Land Use Permit for the Hetch-Hetchy Landscape Renovation (Project No. 5053).
- *17.
Sewer Flow Allocation Study**
- Authorized the City Manager to execute the consultant agreement with Raines, Melton & Carella Consultants, in the amount of \$28,520.00, subject to approval as to form by the City Attorney, to review existing methodologies and possible alternatives to determine if an increase in remaining capacity can be validated.
- *18.
Water System Air Relief Valve
Modifications – Phase I
(Project No. 7086)**
1. Rejected the bid of San Jose Water Company (low bidder) for non-compliance with the Public Contracts Code.
 2. Awarded the contract to West Valley Construction (second low bidder) in the amount of \$154,615.00, for work that involves retrofitting approximately forty (40) existing air relief valves from below ground level to above ground level to comply with State Code, Title 22, Chapter 16, as mandated by the California Department of Health Services (DOHS).
- *19.
Main Sewage Pump Station
Design Demolition and
Site Improvements
(Project No. 6079)**
- Authorized the City Manager to execute the agreement amendment with Lowney Associates, in the amount of \$24,900.00, subject to approval as to form by the City Attorney, for professional services relating to hazardous material abatement, testing and geotechnical engineering needed to design demolition and site improvement.
- *20.
Main Sewage Pump Station
Demolition and Removal
(Project No. 6079)**
1. Rejected the low bid proposal from Peak Engineering as nonresponsive.
 2. Awarded a construction contract to the lowest responsive bidder, ICONCO, Inc., in the amount of \$695,000 (including bid alternate items 1 and 2) for Main Sewage Pump Station Demolition and Site Improvements Phase I (Project No. 6079), to include demolition and removal of the abandoned chlorine contact basin, sludge basin, chlorine building, operations building, and inactive utilities and appurtenances, as well as site regrading and related utilities work.
 3. Waived minor bid irregularities not deemed substantive in ICONCO's bid proposal.

***21.
Intersection Video Detection
Systems (Project No. 4223)**

Awarded the bid for the purchase of the intersection video detection systems to the lowest bidder, Synchronex, Inc. in the amount of \$38,970.00, for intersection Video Detection Systems (Project No. 4223)

***22.
Public Safety Radios
(Project No. 8125)**

Awarded the bid for the purchase of the communication radios and accessories to the lowest bidder, Bearcom Wireless Worldwide, in the amount of \$27,528.33 including tax and shipping, for purchase of replacement Public Safety Radios (Project No. 8125).

***23.
Miscellaneous Vendors**

Approved the following miscellaneous payment requests:

1. \$12,725.00 to West Valley Sanitation District to manage a study to identify available treatment plant capacity that could be purchased by the City of Milpitas for future City development for the Utility Engineering Section. (Funds are available from the Engineering Division's Sewer Fund operating budget for this service.)
2. \$9,813.48 to the Department of California Highway Patrol for the City's share of traffic enforcement of High Occupancy Vehicle Lanes (HOV) by the Highway Patrol on the county expressways (Montague). (Funds are available from the Police Department operating budget for this service.)
3. \$5,706.68 to Catherine Harris, Esq. for professional services for a grievance case for the Human Resources Department. (Funds are available from the Human Resources Department operating budget for this service.)
4. \$7,865.78 to American Portable Storage for the purchase of two used 20 foot shipping containers with modifications and delivery to provide secure storage of Public Works equipment. Storage space is needed due to demolition of operations building and garage at the old treatment plant. American Portable Storage submitted the lowest quote of three suppliers. (Funds are available from the Main Sewer Pump Station Site Improvements (Project No. 6079) project budget for this purchase.)
5. \$6,314.33 to Always Under Pressure for the purchase of a gas operated hot water pressure washer for the Facilities Maintenance Section for special cleaning needs at the Civic Center Plaza. Always Under Pressure submitted the lowest quote of three suppliers. (Funds are available from the Equipment Replacement Fund budget for this purchase.)

PUBLIC HEARING

**1.
Consolidation Annual
Performance Evaluation
Report (CAPER)**

Principal Housing Planner Felix Reliford reported the Consolidated Annual Performance Evaluation Report (CAPER) was a Housing and Urban Development mandated report for entitlement cities that receive Community Development Block Grant funds; the report identified the City's programs and activities undertaken during the past fiscal year (2003-2004) funded by the Council; and the following major accomplishments were identified:

- Approximately 1,648 new housing units that had been proposed and/or approved by the City Council, which included approximately 392 new affordable housing units;
- Exceed the goal of 200-250 new affordable housing units identified in the Five-Year HUD Consolidated Plan (2002-2007);
- Implemented the Consolidated Plan, the Midtown Specific Plan, and the General Plan Housing Element to increase the supply of affordable housing to Milpitas residents;
- The Council had also funded CDBG programs, which included the Interim Senior Center modulars and a Shelter for Homeless and Runaway Youths;

- Funded assist 25 different public service agencies, which provide services to Milpitas residents; and
- The Council had approved CDBG funds for eight single-family homes for very low, low, and moderate-income households..

Mr. Reliford further stated that, as required by the HUD guidelines, the CAPER had been advertised for public review and comments for 15 days (August 23-September 8, 2004), copies of the Report were sent to all service and housing providers that received CDBG funds from the City and other interested parties; copies had also been made available at City Hall and the Library; staff received one comment from Project Sentinel, the City's fair housing provider; on page 17 of the CAPER report, at the bottom of the page underlined at the title of "Affirmatively Furthering Fair Housing," staff mistakenly included Mid-Peninsula as a reference in providing fair housing services; the final document that would be submitted to HUD will delete this reference; also on Page 6 of the CAPER report, staff would like to include the 98 affordable housing units into the chart that the Council conceptionally approved at its last meeting, bringing the total number of housing units in the City would be from 1,648 to 1,746; and the total number of affordable units would increase from 392 to 490.

Vice Mayor Dixon, referring to a report that came out from the Building Industry giving Milpitas an "F", said this report blew that away. Mr. Reliford stated he felt it would, the Building Industry had its own methodology, and the method used for calculation of affordable units was different from agency to agency. Vice Mayor Dixon said she felt that if standards were developed, maybe that would enable cities to comply better; stated this was a good improvement and was very impressed to see the number go up the way they had.

Councilmember Livengood commented that the numbers looked good on the affordable housing and felt that the interesting part was that the City, through its Redevelopment Agency (RDA), through the Council and staff had created a lot of these by being creative and not having a inclusionary zoning ordinance that required these units into projects where they don't necessarily work; he thought it was a real tribute to the City by forging partnerships with non-profits and with builders to make this happen..

Mayor Esteves opened the public hearing and invited comments. There were no comments.

MOTION to close the public hearing.

M/S: Livengood, Gomez.

Ayes: 5

MOTION to adopt the Consolidated Annual Performance Evaluation Report for FY 2003-2004 as amended by the following revisions:

- Remove Mid-Peninsula from page 17.
- Include the 98 affordable housing units conceptionally approved by the Council into the chart on page 6.

M/S: Gomez, Polanski.

Ayes: 5

JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. CALL TO ORDER

Mayor Esteves called to order the regular meeting of the Milpitas Redevelopment Agency, meeting jointly with the City Council, at 7:55 p.m.

RA2. ROLL CALL

Present were Mayor Esteves, Vice Mayor Dixon, and Agency/Councilmembers Livengood, Polanski, and Gomez.

RA3.

MOTION to approve the Redevelopment Agency minutes of September 7, 2004, including

MINUTES

joint meeting with the City Council, as submitted.

M/S: Dixon, Livengood.

Ayes: 5

RA4. AGENDA

MOTION to approve the agenda as submitted.

M/S: Dixon, Livengood.

Ayes: 5

RA5. SPORTS CENTER CONCEPT PLAN

Assistant Civil Engineer Elizabeth Roca-Johnson presented the Council with a PowerPoint display depicting the proposed changes; informed the Council that staff had presented the Concept Plan to the Parks, Recreation, and Cultural Resources Commission (PRCRC) and the Milpitas Unified School District (MUSD); and both the PRCRC and the MUSD had recommended moving forward with the design. Ms. Johnson explained that the next step was to move forward with the design details; outlined the Concept Plan, explaining that the Concept Plan addressed circulation needs and anticipated future recreational improvements; that some of the improvements for pedestrian access would be to have pedestrian walks and lighting, eliminating the need to walk behind cars; a new intersection would be placed at Carnegie Drive, and the current west entrance would be moved easterly; landscaping would be placed along Calaveras, there would be unified attractive signage and attractive walks would be provided; showed aerial shots of the current location; and stated the new plan provided two entrances to the Sports Center.

Councilmember Livengood requested Ms. Johnson clarify where the current Sports Center ingress and egress were. Ms. Johnson pointed to the slide representing the current entryway to the Sports Center, located off Calaveras Boulevard, and stated that the Concept Plan proposed the existing entryway be moved easterly. Councilmember Livengood stated he thought it looked like the entryway was too far to the west and inquired if there currently were two driveways. Ms. Johnson clarified that there were two driveways, that one of the driveways went into the School District and did not allow patrons to access the Sports Center; currently, the only way patrons were able to access the Sports Center was through the Calaveras Boulevard access. Councilmember Livengood, addressing moving the entrance, inquired if any parking would be lost. Mr. Rogge stated the current entrance was being moved as far easterly as possible, allowing additional cueing and stacking, a short landscape buffer would also be added behind the sidewalk, and the overall impact would be to add 100 parking spaces. Ms. Johnson stated a new exit off Park Victoria had just opened. Councilmember Livengood inquired if that exit would be both ingress and egress. Mr. Rogge stated it was an exit only. Councilmember Livengood inquired if, upon exiting this location, a vehicle could go either right or left. Mr. Rogge stated it was currently set up to be used for events, therefore, depending on how it was monitored, it could be either right turn only or right or left. Councilmember Livengood inquired if it would be open every day. Mr. Rogge stated it would not. Ms. Johnson added that the Concept Plan also allowed room for future recreation improvements.

Councilmember Gomez, referring to the conceptual layout, requested affirmation that the Sports Center complex track field would be gone. Mr. Rogge stated the usage of the facility had been looked at, and as the City now had the new all-weather sports track in the School District area, it was found there were very few users of the Sports Center track, and that the Sports Center track would be gone. Mr. Rogge further stated that each of the pedestrian walkways and runways around the recreation facilities would have mileage markers.

Mayor Esteves inquired as to how results were tested (i.e., pedestrian safety and high event clogging). Mr. Rogge responded some of the concepts were to separate the vehicle traffic to the extent possible from the pedestrian traffic so that, in most cases, entry could be made from the sidewalk, walking along the sidewalk all the way to one's destination or exiting along Park Victoria; by separating that out, it was one of the efficiencies that would also help the traffic efficiency as vehicles would not be waiting at pedestrian walkways; by making the

lanes 2-way, better access in and out would be provided; the dual access point could be opened across the main pedestrian walkway for emergency access. Mr. Rogge informed the Council that staff had worked with a traffic consultant to lay out the concept.

Councilmember Polanski said this presentation had been brought before the Parks, Recreation, and Cultural Resources Commission (PRCRC); the PRCRC had been pleased with the presentation and the elements, especially the ability to walk around the entire site, the mileage markers, and the use of the facilities.

Vice Mayor Dixon stated she had been in attendance when this presentation was given to the School District and expressed that there had been discussion that with the new concept, the School Board would be walking a bit further, but would be a lot safer.

Mayor Esteves inquired if staff had an estimate of the actual construction cost. Mr. Rogge stated staff would be coming back to the Council with the cost estimate, which was part of the design work, and believed it would be over \$1 million but did not have an exact amount.

MOTION to:

1. Approve the Sports Center Circulation Concept Plan.
2. Authorize the City manager to execute the consultant service agreement with SSA Landscape Architects, Inc., in the amount of \$229,489, subject to approval as to form by the City Attorney.

M/S: Gomez, Polanski.

Ayes: 5

**RA6.
ADJOURNMENT**

There being no further Redevelopment Agency business, Mayor Esteves adjourned the Redevelopment Agency meeting at 8:15 p.m.

The City Council meeting continued.

REPORTS OF OFFICERS

**2.
FIRST 5 PRESENTATION**

Mayor Esteves thanked the FIRST 5 Santa Clara County representatives for coming to Milpitas, commenting that FIRST 5 Santa Clara County was a major project going on with Proposition 10; FIRST 5 representatives would be presenting a brief background on Proposition 10, the First 5's current funding initiatives and programs, information about specific programs and activities that FIRST 5 was funding in Milpitas, and information on the newly developed five-year community investment plan.

Akemi Flynn said she was a FIRST 5 Commissioner appointed by Santa Clara County Supervisor McHugh, the primary purpose of the group's presentation was to express gratitude to the Council, to thank every Councilmember for the partnership the Council had engaged in with First 5, to thank Milpitas staff and residents who had been key partners, and to ask for continued support and partnership building on what was already in place as well as new and exciting things on the horizon being worked towards. Ms. Flynn provided a PowerPoint presentation outlining that FIRST 5 would be a catalyst for ensuring that the development needs of children through age 5 were a priority in all sectors of the community and explained that Proposition 10 was the 1998 voter approved Children and Family First Act, which established a tobacco tax; the tobacco tax revenue was allocated to support the healthy development of young children and their families; a State Commission and 58 County Commissions had been created to administer the annual revenues; and Santa Clara County had approximately \$23 million in Proposition 10 tax revenues to be allocated in partnership with Santa Clara County community members. Ms. Flynn outlined the FIRST 5 Organization, its Mission and Core Values, and its Focus Areas; outlined First 5's definition of Systemic Change, which involved all the systems (City systems, Community based

organizations, County Systems, and how all were interfaced together). Ms. Flynn further outlined First 5's current efforts in Milpitas, stating that Milpitas was in the North East Region along with Berryessa, Alviso, Orchard, and North San Jose; the allocation for the North East Region was up to \$670,000 annually.

Vice Mayor Dixon said while at the City/School Communication Committee, the mobile unit had been discussed and suggested the Council be apprised of what exactly the mobile unit would provide. North East Region Program Coordinator Elizabeth deGuzman acknowledged Felix Reliford, who had served as co-chair, and Outreach Specialist Thong Le, and explained the Mobile Van provided health services (i.e., tuberculosis testing, hearing and vision screening, immunizations, and follow-up of TB testing) to the child and members of the child's family; the Van also provides health referrals.

Mayor Esteves inquired how FIRST 5 would announce to the public how they can avail themselves of the services. Mr. Reliford summarized that the Mobile Van services had been advertised in the Milpitas Post, a notice had been placed on the City's Web site and on Channel 15, flyers had been placed at various City buildings, and notices had been sent to the preschools.

Vice Mayor Dixon said the School District would be passing out information through newsletters and on October 16, 2004, the Harvest Festival would incorporate the Alliance for the Arts, which might be an opportunity to provide the public with information.

Mayor Esteves thanked the Community members who took part in being part of the partnership.

3. Proposition 1A Support

City Manager Wilson explained that Proposition 1A was the proposition that ensures, if adopted, that the State would not have free and easy access to local monies; it was part of the budget solution that started with the California League of Cities, and, with Governor Schwarzenegger's support, it had become a new proposition that provides an insurance against future confiscation of City revenues.

Mayor Esteves informed the Council that he was requesting Council approval of a resolution in support of Proposition 1A; it will strengthen Milpitas' financial standing as a city; if passed, the Measure would prohibit the State from dipping into local tax revenue except in case of severe physical emergency; also prevents the State from imposing mandates on local governments without providing money to pay for them.

Councilmember Gomez inquired if Mayor Esteves was recommending that Proposition 65 be abandoned. Mayor Esteves stated that was the intent and explained that both propositions (65 and 1A) intended to protect local monies.

Councilmember Polanski stated Proposition 1A had been extensively discussed at the recent California League of Cities Conference and one of the things mentioned by League members was that this was the first time they had seen the cities come together with such force and with such a strong voice in support of Proposition 1A.

Mayor Esteves read a quote that stated "Governor Schwarzenegger made a campaign promise to end the practice in Sacramento of raiding local government to balance the State budget."

MOTION to adopt Resolution No. 7473 supporting Proposition 1A.

M/S: Esteves, Polanski.

Ayes: 5

UNFINISHED BUSINESS

7.
Planning Commission Vacancy

City Manager Thomas Wilson stated staff was requesting direction regarding the appointment process to fill the Planning Commission vacancy; an ad had been placed in the Milpitas Post for four weeks and an announcement had been included on the City's web site; to date, only two applications had been received for the one position; and staff recommended that the application time period be extended and an appropriate interview process be rescheduled after receiving additional applications.

Councilmember Gomez inquired what process had been gone through and how the process would be different this time. City Manager Wilson stated there had been an advertising process in the Milpitas Post and notice had been placed on the City's web site; staff was proposing to solicit comments from all of the City's Commissioners as to potential members either from the Commissions or from their knowledge of community members that might have an interest and the summer was a time when the highest return was not received because of family vacation commitments, etc. Councilmember Gomez requested clarification that the Commissioners had not previously been contacted, but, with the new round, the Commissioners would be directly solicited. City Manager Wilson confirmed that the Commissioners would be contacted directly and a more extensive community effort would take place. Councilmember Gomez inquired as to the time line being proposed. City Manager Wilson stated staff was looking for Council direction as to the time line.

Mayor Esteves said he agreed with staff's recommendation to consider as many applicants as possible and inquired if this opening was to fill Commissioner Nitifan's vacancy with a term of two years. City Manager Wilson confirmed it was. Mayor Esteves further stated he felt another thing that should be considered was that at the end of 2004, two terms would be expiring and the same process would take place. City Manager Wilson said that in the past, there had been two approaches; the Council had always sought to see if the existing seated Commissioners wished to remain, and if a Commissioner did not wish to remain seated, an advertising and recruitment process would be conducted. Mayor Esteves said an interview process could be considered as well. City Manager Wilson clarified that, for example, if there were two positions whose terms were ending and one or both of the Commissioners did not wish to continue, a recruitment and interview process would be conducted. Mayor Esteves further stated that even if the Commissioners wished to remain seated, the Council had the option to undergo a recruitment and interview process.

Mayor Esteves suggested that the application process be extended; if there were a lot of applicants, the process would possibly be continued; however, consolidating into one recruitment process was another option.

Councilmember Polanski said if two more terms expire at the end of December, it seemed to make more sense to recruit for all the positions, she didn't have a problem with one recruitment process, and she had always thought the Council should consider reducing the number of Planning Commissioners from 7 to 5.

MOTION to direct staff to extend the application period and combine recruitment to include terms ending December 2004.

M/S: Gomez, Polanski.

Ayes: 5

City Manager Wilson said staff would return to the Council with a plan to include timelines and deadline.

ADJOURNMENT

There being no further Council business, Mayor Esteves adjourned the City Council meeting at 8:51 p.m.

Donna Manning, Acting Deputy City Clerk, for
Gail Blalock, City Clerk

The foregoing minutes were approved by the City Council as submitted on October 19, 2004.

Gail Blalock
City Clerk

Date

APPROVED MINUTES
CITY OF MILPITAS

Minutes:	Regular Meeting of Milpitas City Council (Including Joint Meeting with Redevelopment Agency)
Date of Meeting:	September 7, 2004
Time of Meeting:	6:00 p.m. (Closed Session) 7:00 p.m. (Regular Session)
Place of Meeting:	City Hall Council Chambers, 455 E. Calaveras Blvd.

ROLL CALL

Mayor Esteves called to order the regular meeting of the Milpitas City Council at 6:00 p.m. Present were Mayor Esteves, Vice Mayor Dixon, and Councilmembers Livengood (arrived 6:15 p.m.) and Polanski. Councilmember Gomez was absent.

CLOSED SESSION

Mayor Esteves publicly stated the Council would convene in Closed Session to discuss the following eight items listed on the agenda:

- 1. Conference with Labor Negotiators**
(Pursuant to Government Code Section 54957.6)
Agency Designated Representatives: Eddie Kreisberg and Cherie Rosenquist
Employee Organization: LIUNA
- 2. Conference with Real Property Negotiators**
(Pursuant to Government Code Section 54956.8)
Property: 110 Winsor Street
Agency Negotiator: Thomas J. Wilson
Negotiating Party: KDX Services and Keith Dimmick
Under Negotiation: Price and terms for acquisition of property interest
- 3. Conference with Legal Counsel - Existing Litigation**
(Pursuant to Government Code Section 54956.9)
City of Milpitas vs. Donald J. Kennedy, et al.
Santa Clara County Superior Court Case No. 104CV023573
- 4. Conference with Real Property Negotiators**
(Pursuant to Government Code Section 54956.8)
Property: 94, 110 and 120-150 Winsor St. (APNs 028-24-014 and 028-24-015) and 116-130 North Main St. (APN 028-024-026) and (APN 028-024-020)
Negotiating Parties: Milpitas Redevelopment Agency and Dorothy A. & Ruth A. Winsor
Agency Negotiators: Thomas J. Wilson and Blair King
Under negotiation: Terms and Conditions for disposition or lease.
- 5. Conference with Real Property Negotiators**
(Pursuant to Government Code Section 54956.8)
Property: 86 North Main Street, APN 028-024-025
Negotiating Parties: Milpitas Redevelopment Agency and Juan J. Rodriguez and Rose E. Rodriguez Trustees of the Juan and Rose Rodriguez Family Trust, dated December 18, 2001
Agency Negotiators: Thomas J. Wilson and Blair King
Under negotiation: Terms and Conditions for disposition or lease.
- 6. Conference with Real Property Negotiators**
(Pursuant to Government Code Section 54956.8)
Property: APN #022-08-042 (vacant property south of DeVries/Smith House)
Negotiating Parties: City of Milpitas/Redevelopment Agency and County of Santa Clara
Agency Negotiator: Thomas J. Wilson
Under Negotiation: Terms and Conditions for Disposition or Lease

7. Conference with Real Property Negotiators

(Pursuant to Government Code Section 54956.8)

Property: Vacant Property N. Main Street (APN No. 2208003)

Negotiating Parties: City of Milpitas/Milpitas Redevelopment Agency and Kathleen Cardoza

Agency Negotiators: Thomas J. Wilson and Blair King

Under Negotiation: Terms and conditions for acquisition of property

8. Conference with Real Property Negotiators

(Pursuant to Government Code Section 54956.8)

Property: 163 North Main Street, APN #022-08-041

Negotiating Parties: Mid-Peninsula Housing Coalition, a California Non-Profit Public Benefit Corporation, City of Milpitas, and Milpitas Redevelopment Agency

Agency Negotiators: Thomas J. Wilson and Blair King

Under Negotiation: Terms and conditions for disposition or lease

Mayor Esteves adjourned the meeting to closed session at 6:01 p.m.

The City Council meeting reconvened at 7:00 p.m. with Mayor Esteves presiding and Vice Mayor Dixon and Councilmembers Livengood and Polanski present. Councilmember Gomez was absent.

**CLOSED SESSION
ANNOUNCEMENTS**

City Attorney Steve Mattas announced that during the Closed Session, four members of the Council were present for all or a portion of the discussion; Councilmember Livengood arrived in the Closed Session at 6:38 p.m. and participated in the item related to the City of Milpitas v. Donald Kennedy; with regard to item 2, the Council, on a 3/0 vote, approved a relocation settlement agreement with DMX and Keith Dimmick in the amount of \$15,000 for a business operating on one of the properties where the new library is being built; and with respect to item 3, the Council, on a 4/0 vote, approved a settlement agreement with Donald Kennedy in the amount of \$12,500 for his life estate interest in property the City is acquiring for part of the Abel/Kennedy intersection improvements and is settlement of his interest in the property.

PLEDGE

Members of Troop No. 92 led the Council and audience in the Pledge of Allegiance.

MINUTES

MOTION to approve the City Council minutes of July 29, 2004, and the City Council minutes of August 17, 2004, including joint meeting with the Redevelopment Agency, as submitted.

M/S: Polanski, Livengood.

Ayes: 4

Absent: 1 (Gomez)

SCHEDULE

Councilmember Livengood reported the September 16 meeting of BAWSCA had been moved to September 23, 2004, at 7:00 p.m.

MOTION to approve the Schedule of Meetings as amended.

M/S: Livengood, Polanski.

Ayes: 4

Absent: 1 (Gomez)

PRESENTATIONS

Mayor Esteves presented a Certificate of Appointment to Barbara Ebright, who was recently appointed to the Senior Advisory Commission.

Mayor Esteves presented a Certificate of Appointment to Lynne Estandarte, who was recently appointed to the Library Advisory Commission.

Mayor Esteves read a Proclamation recognizing Saturday, September 11, 2004, as "Patriot Day 2004" and encouraging all Milpitas citizens to attend the ceremony at 11:00 a.m. at the Milpitas Veterans Memorial Park to honor those who have demonstrated the ultimate form of patriotism. Mayor Esteves presented the Proclamation to Army Ranger Specialist Joshua

Wells who recently returned home from service in Iraq. Mr. Wells said it was a great honor to accept the Proclamation, he was proud to be back home, and looked forward to seeing everyone on Saturday.

Mayor Esteves read a Proclamation recognizing September 19-25, 2004, as "Pollution Prevention Week" in Milpitas and urging citizens and businesses to join in the effort to protect and preserve the environment. Mayor Esteves presented the Proclamation to Zachary DeVine.

CITIZENS FORUM

Mayor Esteves invited members of the audience to address the Council on any subject not on the agenda, requesting that remarks, including any visual or technology-assisted presentations of any kind, be limited to two minutes or less, and noted that the City Clerk would be using the timer and when the red light at the podium came on, two minutes would be up.

Bert Prasek, thanked the Council for the improvements on Piedmont Road commenting that he was very happy with them and his neighbors have told him they no longer need to walk in the mud.

Rob Means commented that often when he talks about Personal Rapid Transit with public officials, they say PRT technology is unproven but are never willing to go the next step; he thought that concern or argument would carry a lot more weight if the proven examples (buses, light rail, BART) were shining examples of success; unfortunately they have been proven to cost a lot to build and operate and provide poor service and fail to significantly reduce congestion in the valley or air pollution. Mr. Means said he thought that something unproven like PRT did have something going for it and would address congestion.

Ted Weller said he was curious about an article he read in the Post during the last week and so he talked to Mr. Richard Ruth and the information he received from him caused him some concern. Mr. Weller read from a court transcript, commenting that the person the court referred to in the transcript was Jack Schenk. Mr. Weller further stated he reviewed a number of Planning Commission minutes (1990-95) and while Mrs. Dixon was on the Planning Commission, Jack Schenk appeared before the Commission a total of 21 times and it appeared no other person spoke on behalf of Shapell at any one of the meetings. Mr. Weller said he was embarrassed and outraged that one of our Councilmembers set such a bad example for our children.

Ed Connor, representing AARP, invited everyone to attend the 50's Sock Hop at the Community Center on Friday, noting that there was no charge for the event.

Craig Ranker, member of the Community Advisory Commission, commented on the Ethics First Program, said the CAC was proud of the Ethics First Program and thanked the Council for its support of the Program. Mr. Ranker commented on a number of activities that would be taking place in October and congratulated the Council on the progress made on the Ethics Program goals.

ANNOUNCEMENTS

City Manager Thomas Wilson reminded everyone of the Patriot Day celebration on Saturday, September 11, at 11:00 a.m. at the Veterans Memorial Park in the Civic Center Plaza and encouraged everyone to come.

City Attorney Steve Mattas asked that at the conclusion of the Council's announcements, he would like to speak with respect to the Council's Open Government Ordinance to identify on the record any potential conflicts of interest.

Councilmember Polanski expressed appreciation to the many Commissioners that assisted with the sale of the History Book at the Art & Wine Festival. Councilmember Polanski also thanked Craig Ranker and the CAC for their continued diligence working not only on the Ethics Program, but a number of other items.

Vice Mayor Dixon commented that school had begun and from what she heard from the Police Department, everything had gone smoothly. Vice Mayor Dixon congratulated the Chamber of Commerce for the annual Chamber-sponsored new teachers' reception. Vice Mayor Dixon reported that she and the Mayor attended the kick-off for all School District employees and thanked the incoming DARE Officers and the Police Chief for being there. Vice Mayor Dixon further reported that she and the Mayor also attended the annual kick-off of the Police Athletic League Knights Football opening and thanked Captain Graham for also attending. Vice Mayor Dixon announced that the Chamber had a few commemorative flute glasses still available for sale at \$8 through the Chamber Office and the Chamber would also continue selling the History Books for \$25.

Mayor Esteves reported that during the August 17 hearing pertaining to the Public Health Goals Report, resident Allyson McDonald raised some issues regarding lead; staff had followed up on the information submitted by Ms. McDonald and reported back that although elevated levels of lead in children have been found to be from different sources by the County Health Department, drinking water has not been determined to be one of the sources.

City Attorney Mattas reported this was an opportunity for the Council to identify any items on the agenda they might have a potential conflict of interest and pursuant to the City's Open Government Ordinance and State law, asked that Councilmembers state whether they have a potential conflict on items on the agenda this evening.

Councilmember Livengood stated that he would abstain from items RA6 and RA7 as they were connected with KB Homes, and he formerly served as a consultant to KB and KB was a source of income to him during the last 12 months.

MOMENT OF REFLECTION

Mayor Esteves announced this was the beginning action with respect to the Milpitas Ethics Program reporting that at the first Ethics Training on July 29, 2004, the Council agreed to monitor how well it was doing at role modeling the City's values of honesty, fairness, respect, teamwork, stewardship, and accountability. Mayor Esteves invited Councilmembers to take a minute to recognize and thank other Councilmembers and City staff for some specific decision or action they believe consistent with one or more of the values.

Vice Mayor Dixon commented that she felt there was a good discussion and staff presentation, along with full Council support, at the last meeting concerning art in the community. Vice Mayor Dixon expressed appreciation to employee Holly Cuciz for helping with the sale of the History books at the Art & Wine Festival and to the DARE Officers who attended the recent back-to-school event.

Councilmember Polanski commented that she thought at the last meeting the Council went beyond the Open Government Ordinance in releasing employee salary information to the Post, which was an example of teamwork; she also appreciated the new Council Handbook; and thanked Holly Cuciz and all the representatives of the different Commissions for helping out at the Art & Wine Festival.

Councilmember Livengood commented on the discussion relating to employee salaries and the issues relating to the public knowing, it appeared the employee groups had agreed and he wanted to commend them for that. Councilmember Livengood also commented on the Council Handbook that ended up being a series of compromises, which he thought was a good back and forth with the result being a good document that will benefit this Council and future Councils.

Mayor Esteves agreed with the comments that had been made and said he was pleased with the work on the Handbook; he also appreciated the one strong voice in dealing with the release of information on employee salaries and making it public information, and hoped that there wouldn't be resistance from the unions.

Mayor Esteves concluded by thanking everyone for their comments and stating it was a good start for reflections.

AGENDA

City Manager Wilson noted that item RA8 was actually a joint item and had been noticed and advertised as a joint public hearing.

MOTION to approve the agenda as noted.

M/S: Polanski, Livengood.

Ayes: 4

Absent: 1 (Gomez)

CONSENT CALENDAR

Mayor Esteves inquired if anyone wished to make any changes to the Consent Calendar. There were no requests from the Council. Rob Means, in the audience, requested that item 13 (Response to Grand Jury) be removed for discussion. Mayor Esteves honored the request.

MOTION to approve the Consent Calendar, items with asterisks on the agenda, as amended by the removal of item 13, in accordance with the staff recommendations.

M/S: Livengood, Polanski.

Ayes: 4

Absent: 1 (Gomez)

Mayor Esteves commented that one of the items on the Consent Calendar was approval of the events for the Sister City visit from Dagupan City and asked the Commission Chair to make a few comments. Debra Garcia, Chair, Sister Cities Commission, said a delegation from Dagupan City, Philippines would visit on September 14-15, 2004, there were a number of events scheduled, and this was the first official visit since the Memorandum of Understanding for the relationship was signed.

***6. Art in Your Park**

Approved the Arts Commissions' recommendation for adoption of the Art in Your Park Project Roles and Responsibilities.

***7. Sister Cities Exchange Visit**

1. Approved expenses for the Dagupan City September 14-15, and September 23, 2004, municipal exchange from the Council's Community Promotions budget.
2. Authorized the City Manager to execute invoices not-to-exceed \$2,600.

***9. Odor Control**

Noted receipt and filed progress report on the Odor Control Comprehensive Action Plan.

***11. Authorize Filling Positions**

1. Approved filling a Public Services Assistant, a Maintenance Worker I/II, and an unfunded Maintenance Worker III position.
2. Approved a budget appropriation of \$69,000.

***12. Cancel July 19, 2005, Meeting**

Approved cancellation of the July 19, 2005, City Council meeting.

***14. Vehicles for Human Habitation**

Waived full reading of the ordinance and adopted Ordinance No. 263 adding Chapter 19 to Title V of the Milpitas Municipal Code prohibiting the use of vehicles for human habitation.

***15. Safe Havens**

Adopted Resolution No. 7471 approving Milpitas Fire Stations as Santa Clara County Safe Havens under the California Safely Surrendered Baby Law, in coordination with all County Fire Agencies.

***16. Conflict of Interest Code**

Adopted Resolution No. 7472 updating the City's Conflict of Interest Code.

***17. School Recycling Assemblies**

1. Approved the Budget Change Form for the \$18,052 grant award from the Department of Conservation, Division of Recycling Funds (DOC) and;
2. Authorized the City Manager to execute a purchase order with Earthcapades for educational assemblies to promote residential recycling services in schools at an amount not to exceed \$11,000, subject to approval as to form by the Purchasing Agent.

- *18.
Abel/Calaveras Right Turn
Lane (Project No. 4186)** Authorized the City Manager to execute Authorization Letter with SBC Communications, Inc., in the amount of \$10,297.10, subject to approval as to form by the City Attorney, for the relocation of the SBC facilities at the right turn lane from northbound Abel Street to eastbound Calaveras Boulevard (Project No. 4186).
- *19.
Wet Weather Monitoring
Evaluation (Project No. 6102)**
1. Authorized the City Manager to execute the agreement amendment with Raines, Melton, and Carella, Inc., subject to by the City Attorney as to form, to increase the contract amount(Project no. 6102).
 2. Approved the budget appropriation for \$21,690 for an evaluation on the impact of new developments on needed sewage capacities and a determination of associated capacity cost increases that may affect both the City's required sanitary sewer collection system and regional treatment plant capacities (Project no. 6102).
- *20.
Interim Senior Center
(Project No. 8151)** Authorized the City Engineer to execute the Contract Change Order for Ranis Construction in the amount of \$19,219.10 for additional work to repair unforeseen dry rot and termite damage in the restroom walls, relocate and repair unknown electrical lines, upgrade flooring material, and minor painting
- *21.
Berryessa Pump Station** Authorized the City Manager to execute the agreement amendment to refurbish the Berryessa storm drainage pump station to improve its reliability and efficiency, and to ensure compliance with environmental regulations with Olivia Chen Consultants, in the amount of \$120,000.00, subject to approval as to form by the City Attorney.
- *22.
Vehicle Purchase** Awarded the bid for the vehicles to Frontier Ford as the lowest bidder in the amount of \$94,091.04, which includes taxes and freight and authorize the purchase of three investigation cars scheduled for replacement for the Police Department and a cargo van for Park Maintenance, pursuant to the specified years of service stipulated in the MPOA MOU.
- *23.
Public Works Garment Purchase** Awarded the bid for Public Works garment purchases to the lowest bidder, Prolific Screen Printing in the amount of \$20,722.70.
- *24.
Police Patrol Vehicles
Replacement**
1. Awarded the bid for six police patrol vehicles and one SUV to S & C Ford as the lowest bidder in the amount of \$220,757.99, which includes taxes and freight
 2. Authorized the purchase for replacement for the Police Department, pursuant to the specified mileage service stipulated in the MPOA MOU.
- *25.
2004 Street Resurfacing
(Project Nos. 4182 and 4223)** Authorized the City Engineer to execute the Contract Change Order for C. F. Archibald Paving, Inc., for new pavement for various City streets, with the anticipated completion date is October 25,2004, in an amount not to exceed \$25,000.
- *26.
Replacement Mower** Awarded the purchase of the large Toro turf mower with a 16-foot cutting width replacing a 1997 model of the same size from Turf Star, Inc. as a sole source purchase in the amount of \$76,030.72 including tax and freight.
- *27.
Miscellaneous Vendors** Approved the following purchase requests
1. \$5,607.09 to Spinitar Presentation Products for the purchase of a poster printer, software, maintenance and support for Recreation Services and Utility Engineering programs. (Funds are available from the Recreation Services and the Engineering Division operating budgets for this purchase.)
 2. \$14,945.96 to Alcad Standby Batteries for the urgent purchase of batteries, seismic racks and charging system to replace a failing battery system at the Oakcreek pump station. The battery system starts the diesel engines that runs the pumps and provides power to the control panels in case of a power failure. (Funds are available from the Oakcreek Pump Station Engine Replacement (Project No. 8140) project budget for this purchase.)

3. \$9,236.60 to The Stuart Rental Company for rental of tents, booths, tables, chairs and other miscellaneous items for the Global Village event for Recreation Services. (Funds are available from the Recreation Services operating budget for this rental payment.)
4. \$8,500.00 to Raines, Melton and Carella, Inc. to prepare a City wide sewer system map diagramming lines and manholes, flow volumes, direction and other data to estimate future buildout dates for the Utility Engineering section. (Funds are available from the Miscellaneous Minor Sewer Projects (Project No. 6057) project budget for this service.)
5. \$5,412.50 to The Active Network for annual software maintenance for recreation activity management software. (Funds are available from the Information Services Department operating budget for this maintenance payment.)
6. \$11,422.00 to Golden Gate Mechanical for the replacement of a failing air-handling unit at the Community Center. Golden Gate Mechanical's was the lowest quote of four submitted. (Funds are available from the Community Center Renovation (Project No. 8102) project budget for this service.)

PUBLIC HEARINGS

1. Entertainment Event Permit Silent Air Show

City Clerk Gail Blalock presented the request for an Entertainment Event Permit submitted by the Wings of Rogallo Hanggliding Club to hold a Silent Air Show on Sunday, September 19, 2004, from 8:00 a.m. to 3:00 p.m. at Ed Levin County Park. Ms. Blalock noted the Wings of Rogallo held several Silent Air Shows in the 1980s and early 1990s and was bringing the show back again. Ms. Blalock reported that since Milpitas Police and Fire are first responders to Ed Levin Park, a City permit was required in addition to the County permit. Ms. Blalock further reported the application had been reviewed and approved by the various City Departments and following the public hearing, staff recommended approval, subject to the staff conditions and receipt of a certificate of insurance.

Councilmember Livengood asked if any merchandise would be sold, since the question wasn't answered on the County application. Ms. Blalock responded she didn't believe so. City Manager Wilson noted that the Rotary would be selling refreshments.

Mayor Esteves opened the public hearing and invited comments.

Don Herrick, Hanggliding Club Treasurer and liaison to the County Parks Department and the City, explained the show included aviation events but no motors, hot air balloons, hanggliders and paraglider acts, they were working closely with the County Parks Department to make sure all requirements were met and the Milpitas Rotary Club, and all profits would go to the Muscular Dystrophy Association.

Pono Aiona, President, Milpitas Rotary Club, said the Rotary will be supplying the concessions for the event and all their proceeds will go back to Milpitas schools for scholarships.

MOTION to close the public hearing.

M/S: Livengood, Dixon.

Ayes: 4

Absent: 1 (Gomez)

MOTION to approve an Entertainment Event permit for Wings of Rogallo to hold a Silent Air Show on September 19, 2004, at Ed Levin Park, subject to the conditions from staff and receipt of a certificate of insurance.

M/S: Livengood, Polanski.

Ayes: 4

Absent: 1 (Gomez)

2. Entertainment Event Permit

City Clerk Blalock reported this item was also a request for an Entertainment Event Permit submitted by the Northern California Chinese Athletic Federation for a Chinese Moon Festival

Chinese Moon Festival Concert Concert at the Milpitas Square Shopping Center parking lot on Barber Drive on Saturday, September 18, from 5 p.m. to midnight. Ms. Blalock noted this group held a concert at this location a couple of years ago. Ms. Blalock reported the application was reviewed and approved by City Departments and following the public hearing, staff recommended approval, subject to conditions from staff and receipt of an insurance certificate.

Councilmember Livengood inquired if there were any parking problems the last time this concert was held. Ms. Blalock responded she wasn't aware of any. Councilmember Livengood said he would like to have a follow-up report after the event on any parking issues.

Mayor Esteves opened the public hearing and invited comments.

Philip Liu said they held a concert two years ago in this parking lot, they didn't sell any food or drinks so that people would take advantage of the restaurants in the center, the event was very successful, people stood during the concert and seating wasn't provided so they didn't have any problem with parking. Mr. Liu said they enjoyed the concert very much two years ago and invited the Mayor and Council to join them this year.

MOTION to close the public hearing.

M/S: Dixon, Livengood.

Ayes: 4

Absent: 1 (Gomez)

Mayor Esteves said he attended the concert two years ago and thanked this group for bringing this cultural show to Milpitas. The Mayor commented that he enjoyed the show, it was well run, and he didn't see any problem.

MOTION to approve an Entertainment Event permit for the Northern California Chinese Athletic Federation to hold a Chinese Moon Festival Concert on Saturday, September 18, 2004, at the Milpitas Square Shopping Center, subject to the conditions from staff and receipt of a certificate of insurance and a follow up report after the event on any parking issues.

M/S: Dixon, Livengood.

Ayes: 4

Absent: 1 (Gomez)

**3.
Amended Density Bonus
'S' Zone Amendment
(Apton Plaza)**

Assistant Planner Staci Pereira reviewed the modifications to the previously approved mixed use development for Apton Plaza (July 1, 2003) resulting in reductions to the number of residential units (from 102 to 96), the amount of density bonus requested that exceeds the maximum density by seven units rather than 13 units originally granted, the total retail floor area from 6,000 to 3,000 sq. ft., and the number of stories from five to four and overall building height from 60 to 56 feet. Ms. Pereira reported minor modifications included relocation of the garage entrance from Railroad Court to N. Main Street and the trash enclosure from the southeast corner off of Weller Lane to the northeast corner off of Railroad Court. Ms. Pereira further reported the applicant had agreed to designate 19 of the units as affordable (nine very low income and ten moderate income) to meet the density bonus requirements and Midtown Specific Plan affordable housing policies. Ms. Pereira also reported that the Planning Commission reviewed the amended project on May 26, 2004, and recommended approval, and the applicant was in agreement with the conditions.

Mayor Esteves opened the public hearing and invited comments.

Ed Connor said it was his understanding that the final approval of the Midtown Plan specified that everything north of Calaveras was supposed to be designated for a senior campus that would include senior housing and a senior center, and he thought that was what it should be. Mr. Connor asked to have that clarified and commented that he was speaking on behalf of AARP and the Senior Advisory Commission since nobody was present to represent them.

Badru Valani, representing Apton Properties, expressed appreciation to the City Manager, the team of James Lindsay and Mike McNeely, and staff for their dedication and support to make this project happen.

MOTION to close the public hearing.

M/S: Polanski, Livengood.

Ayes: 4

Absent: 1 (Gomez)

Vice Mayor Dixon said she was confused about Mr. Connor's comments about a senior campus because she worked on the Midtown Plan and there was always the Council's commitment to make the property by the current senior center and across the street a future location for senior housing; this particular property had been private ownership for many years; this particular project had gone through several reviews for almost two years; if there ever was an example of our 20 year vision for creating of our downtown, this was an example to bring about greatly needed housing; it will be what we have been talking about for several years "mixed use", it will have the retail downstairs and 19 affordable units a part of this; to have nine units for very low income will be a great addition for seniors who don't need assisted living; this has been long time coming, and she was glad it was here.

Mayor Esteves commented that this was really a project that was an anchor in the north and inquired if there was a timeline for implementation.

Mr. Valani responded they were hopeful to break ground before the end of this year.

MOTION to approved the amended Density Bonus, 'S' Zone Approval Amendment No. SA2004-7, Use Permit No. US2004-02, and Land Exchange Agreement for Apton Plaza.

M/S: Dixon, Polanski.

Ayes: 4

Absent: 1 (Gomez)

JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. CALL TO ORDER

Mayor Esteves called to order the regular meeting of the Milpitas Redevelopment Agency, meeting jointly with the City Council, at 8:22 p.m.

RA2. ROLL CALL

Present were Mayor Esteves, Vice Mayor Dixon, and Agency/Councilmembers Livengood and Polanski. Agency/Councilmember Gomez was absent.

RA3. MINUTES

MOTION to approve the Redevelopment Agency minutes of August 17, 2004, including joint meeting with the City Council, as submitted.

M/S: Livengood, Polanski.

Ayes: 4

Absent: 1 (Gomez)

RA4. AGENDA

MOTION to approve the Agenda and Consent Calendar as submitted.

M/S: Polanski, Livengood.

Ayes: 4

Absent: 1 (Gomez)

RA5. FINANCIAL STATUS REPORT FY ENDED 6/30/04

Finance Director Emma Karlen presented an overview on the City's unaudited financial status for Fiscal Year ended June 30, 2004, reporting that total revenues and other financing sources were \$1.7 million below the original budget, approximately \$4.2 million of General Fund Reserves were used, cost savings compensated for most of the reduced revenues, and the ending deficit was less than the originally anticipated \$5 million. Ms. Karlen also reviewed the unaudited General Fund Reserve status.

Agency/Councilmember Livengood inquired how much of the saving did the hiring freeze account for. Ms. Karlen responded a lot of the positions were already frozen at the beginning of the fiscal year and that \$3.5 million was already included in the budget; approximately \$1 million more came during the course of the fiscal year with additional employees leaving or retiring.

Agency/Vice Mayor Dixon complimented Ms. Karlen and all City employees, particularly the City Manager, for cutting back, and commented that she thought this was a clear indication that everybody listened and participated.

City Manager Thomas Wilson commented that this was the result of some excellent work by all employees at every level; all of this was done while maintaining service levels and with some increases in services; when you consider the reduction in revenues and the savings, you really see a shift in the budget of almost \$5 million, which was a credit to the employees; and while our employees are compensated well, he believed the Council was seeing the kind of productivity they are able to generate; and once again, he wanted to thank the department directors and all the employees for their service to the community.

MOTION to note receipt and file report.

M/S: Dixon, Polanski.

Ayes: 4

Absent: 1 (Gomez)

Agency/Councilmember Livengood left the dais and Council Chambers.

**RA6.
SENIOR HOUSING PROJECT
DEVRIES/SMITH HOUSE**

Assistant City Manager Blair King reported in May the Council authorized staff to enter into negotiations with Mid-Peninsula Housing Coalition to develop at least 98 senior affordable housing units at the DeVries/Smith House site; since that time Mid-Peninsula and staff have been working very closely through a variety of issues and conceptually were at a point of having a preliminary site plan to present to the Council for direction. Mr. King introduced Fran Wagstaff and Mara Blitzer of Mid-Peninsula.

Fran Wagstaff commented that Mid-Peninsula had a lot of experience in this area and using a PowerPoint presentation, showed slides of some of the work they had done restoring and incorporating historical houses within new developments in Fremont, San Mateo, and San Jose. Mara Blitzer summarized the proposed project to build approximately 100 units for extremely low-income seniors that would include on-site management and social services. Ms. Blitzer said the proposal was to move and preserve on site the DeVries House, noting that it would require a new foundation, for a total project cost of \$20.2 million. Ms. Blitzer described the project units and affordability, the financing summary, and the conceptual site plan. Ms. Blitzer presented two schemes (Scheme F with the DeVries House facing Main Street and Scheme F1 with the house facing internally) and said they were hoping to get direction from the Council on the location of the house.

Vice Mayor Dixon said for her, the attractive feature of the house was the porch but expressed concern for how it would function within the project. Agency/Councilmember Polanski expressed her preference to have the house face Main Street so it could still be enjoyed by the rest of the public. Mayor Esteves said he was please with the objective of making it functional and invited comments from the audience.

Frances Krommenhock, Parks, Recreation & Cultural Resources (PRCRC) Commissioner, said the PRCRC has responsibility for those structures on the list of cultural resources but the Commission did not have a chance to see any of this; they appeared at the Commission's last meeting for an environmental impact report, which they said meant nothing; and she thought it would be nice for the Commission to look at this or maybe the Council should remove "cultural resources" from the Commission's name so there no longer is a need to come to the Commission.

Agency/Councilmember Polanski commented as the liaison to the PRCRC, she had asked the Chair of the Commission, Mr. Munzel, to hold a special meeting so that this could be presented; Mr. Munzel replied back to her that they were not interested in holding a special meeting; she heard from some members at the Art & Wine Festival that they would gladly have met; and emphasized that she did provide an opportunity for the Chair to call a special meeting.

City Manager Wilson clarified that even though there was not a special meeting held by the PRCRC, the item was just to get an orientation to the site and the preservation aspects would be going to all the appropriate commissions.

Robert Burrill said that as a photographer, he did fly over Milpitas to acquire another aerial photo that showed the growth in this area. Mr. Burrill expressed concern for maintaining this beautiful building as a historic resource; as President of the Milpitas Historical Society, he agreed with Councilmember Polanski about the front view; expressed concern for moving it off its foundation and turning it away from the way it has been seen; and asked for clarification where the senior center would be located stating that he heard it would be at the present library location and the library would be at the current senior center location. Mr. Burrill further commented that if the Town Center is going to be redeveloped, why not put the high density housing next to the senior center, and said he heard as much money will be put into the new library and it cost to build City Hall.

Mayor Esteves responded the projected cost of the library was \$40 million, excluding the parking, and the development approved earlier would have low cost housing. Mayor Esteves said he was glad there were people present for this item because there had been some rumors that the Council was not considering saving the DeVries House when, in fact, the Council was projecting to spend \$1 million, which showed the Council was serious about historic values.

Ed Connor reported this was talked about at the last meeting of the Senior Advisory Commission and they didn't appreciate the proposed 99 year lease; he went along with the Historical Society that if the house is going to be moved, it should be moved across the street and put next to the old grammar school so that there would be a piece of history where it happened; this would give more room to do what you want to do. Mr. Connor said there was also a concern about parking for the County facility and suggested closing off Main Street and having the off ramp go into the parking lot of the future clinic, which would free up some space and give more room.

City Manager Wilson commented that the facilities were approved long ago, Apton Plaza was a private development, the present senior center would become a library and parking will be provided, the site across the street would contain two major features -- housing and a medical clinic with parking on the south side of the off ramp from 237.

Ray Maglalang said this project reminded him of 280 S. Main Street, which he remodeled approximately 1,200 sq. ft. at a cost of \$100,000; he thought \$1 million was too much; 280 S. Main Street was older than the DeVries House; and if the DeVries House was historically registered, it would be expensive but if not, he thought \$1 million was too much.

Joann Souza said she didn't think \$1 million was too much because it was important to restore that house, she was a third generation Milpitan, and inquired if the tank house in the back was going to be restored. Mayor Esteves responded probably not. City Manager Wilson clarified it was necessary to spend some money to rehabilitate the house; it may be a million dollars or less or even more.

Rob Means said he was starting to get a little nervous about the density with Apton Plaza, the library, senior center, and traffic going to the clinic, Main Street has always been small and crowded, it seemed like a lot of activity was being dropped into this intersection, and suggested putting in a PRT route that would connect the Civic Center with the new library and the LRT at the end of Main Street to help move people around.

Vice Mayor Dixon said she liked the idea of putting the porch facing the street, she had confidence in Mid-Peninsula and knew the good work they are capable of doing; we tried to get the PRCRC to sit through this but the majority didn't want to do it; and this was just the decision for the location and commitment to moving forward but it will be going through the PRCRC.

Mayor Esteves commented that even in the design of the new library, the focus was preservation; this showed how the Council values its historic buildings; and he hoped to take a close look and get the right input.

MOTION to approve the Preliminary Site Plan for the Senior Housing Project, including construction of a new four-story building and the preservation and relocation on-site of the DeVries/Smith House using Scheme F1, with the porch facing N. Main Street.

M/S: Dixon, Polanski. Ayes: 3 Abstain: 1 (Livengood) Absent: 1 (Gomez)

RECESS

Mayor Esteves recessed the Joint City Council/Redevelopment Agency meeting at 9:29 p.m. The Joint meeting reconvened at 9:42 p.m. with Mayor Esteves, Vice Mayor Dixon, and Agency/Councilmember Polanski present. Agency/Councilmember Livengood remained outside the Council Chambers.

RA7. SANTA CLARA CO. MOU HEALTH CENTER

Assistant City Manager King reported approximately 12 months ago, staff learned that the County of Santa Clara was seeking to acquire property in Milpitas to construct a large primary care health center with parking; staff entered into dialog with County staff concerning a suitable location, and a site owned by the City was identified to the south of the DeVries House that is well served by public transportation. Mr. King further reported that on March 16, 2004, the Council/Agency authorized an appraisal of the value of the property for possible sale to the County; and on April 5, 2004, staff was authorized to develop a framework of an agreement for sale of the site and the development of a County Health Center. Mr. King reviewed the six deal points listed on the agenda and reported that staff was asking that the Council approve the Memorandum of Understanding between the Redevelopment Agency, the City, and the County of Santa Clara, noting that the MOU would go to the Board of Supervisors next week for approval. Mr. King introduced County representatives Robin Rush, Larry Jenkins, and Alex Gallego present in the audience.

Vice Mayor Dixon expressed concern that it be well lit and hoped that it would not be just a blank wall but would have some type of softening treatment and blend into the Midtown area.

A County representative commented that this was one of four health centers the County was completing, every building was designed for the area it was in, and they were very excited about this being a master theme area.

Vice Mayor Dixon asked what services would be included at the health center. Mr. Rush responded his plan was for it to be a full service clinical facility. Mr. Rush responded to further questions from Vice Mayor Dixon concerning the number of employees and where the customers would come from.

Agency/Councilmember Polanski asked about the timeline. The County representative responded this would be the County's fourth clinic and he would be recommending to the Board next week that he be given authorization to go ahead to begin design work, which would save approximately six months, and he thought their timeline would fit the City's timeline.

MOTION to approve execution of a Memorandum of Understanding among the Redevelopment Agency, City of Milpitas, and County of Santa Clara for the development of a Health Center on property identified as APN 022-08-042 (vacant land southerly of the DeVries/Smith site).

M/S: Dixon, Polanski. Ayes: 3 Abstain: 1 (Livengood) Absent: 1 (Gomez)

Agency/Councilmember Livengood returned to the dais at 10:02 p.m.

RA8.

City Manager Wilson reported this item was the last major piece of work began two years ago

RDA PROPERTY PURCHASE to restructure and expand the Redevelopment Agency and presented some history on the proposal to transfer eight sites owned by the City to the Redevelopment Agency, creating a value that the Agency over time can compensate the City for. Assistant City Manager King reported the Agency was proposing to purchase at market value eight parcels owned by the City within Redevelopment Project Area No. 1, for a total purchase price of \$29,300,000. Mr. King further reported this was being proposed for three essential management reasons (capital project management, annual statement of indebtedness, and budget management); the Redevelopment Agency would purchase the eight parcels at market value from the City for a total purchase price of \$29,300,000 according to the terms of a promissory note; an initial payment of \$6,100,000 will be made prior to June 30, 2005, and the remaining balance of \$23,200,000 will be paid upon demand; and six properties will be leased back to the City with no rent obligation unless by mutual consent. Mr. King stated that Redevelopment Law, the Health and Safety Code Section, and the amended Redevelopment Plan, Sections 300 and 325, make provision for the property purchase and lease. Mr. King reported this was a required public hearing and had been properly noticed.

City Manager Wilson asked that the Mayor open the public hearing. Mayor Esteves opened the public hearing and invited comments. There were no comments. Mr. Wilson and Mr. King responded to questions from the Council/Agency.

MOTION to close the public hearing.

M/S: Polanski, Livengood. Ayes: 4 Absent: 1 (Gomez)

MOTION to:

1. Adopt Redevelopment Agency Resolution No. RA228, authorizing the Use of Tax Increment Revenues for the acquisition of land and public improvements;
2. Adopt City Council Resolution No. 7469 authorizing the Sale of Property and the use of Tax Increment Revenues for the acquisition of land and public improvements;
3. Adopt Redevelopment Agency Resolution No. RA229 authorizing the lease of Agency property to the City of Milpitas; and
4. Adopt City Council Resolution No. 7470 authorizing the lease of Agency property by the City of Milpitas.

M/S: Polanski, Dixon. Ayes: 4 Absent: 1 (Gomez)

**RA9.
LIBRARY DESIGN UPDATE**

Capital Improvements Projects Manager Mark Rogge presented a status report on the Library design work commenting that the conceptual plan was expected to be completed by January. Mr. Rogge said reports to the Council would generally follow the Library Subcommittee meetings.

Vice Mayor Dixon inquired about community outreach concerning the project. City Manager Wilson responded that staff would be putting everything on the City's web site and was also working on a specific newsletter or document that might be issued monthly once there is something more tangible to show.

MOTION to note receipt and file.

M/S: Dixon, Polanski. Ayes: 4 Absent: 1 (Gomez)

***RA10.
APTON PLAZA OPA**

Adopted Redevelopment Agency Resolution No. RA230 approving the execution of an Owner Participation Agreement with Apton Properties and making certain findings.

***RA11.
FY 2003-04 BUDGET**

Approved the Fiscal Year 2003-04 year-end budget appropriations and transfers as itemized in the budget change form included in the Agency/Council's agenda packet and approved closure

YEAR END ADJUSTMENTS	of the 1997 Tax Allocation Bonds – Escrow Fund, 1997 Tax Allocation Bonds Debt Service Fund, 2000 Tax Allocation Bonds Debt Service Fund, AND Great Mall o the Bay Area Sales Tax Revenue Bonds Debt Service Fund.
*RA12. 2004-2005 FINAL BUDGET & 2004-2009 CIP	Noted receipt and filed the 2004-2005 Final Budget totaling \$125,538,449, and the 2004-2009 Final Capital Improvement Program Budget, including \$14,323,712.12 for capital projects in the first year of the five-year plan.
*RA13. MIDTOWN PARKING STRATEGIES & MTCE	Authorized the City Manager to terminate the Professional Services Agreement with MuniFinancial and authorize substitute agreements with Willdan for services related to Midtown parking strategies and David Taussig & Associates for services related to assessment and maintenance strategies.
RA14. ADJOURNMENT	There being no further Redevelopment Agency business, Mayor Esteves adjourned the Redevelopment Agency meeting at 10:25 p.m. The City Council meeting continued.

REPORTS OF COUNCIL & COMMISSIONS

4. “Sunshine” Ordinance	<p>Mayor Esteves said he asked that this be on the agenda because at the last meeting during the discussion of providing information on employee salaries, the City Attorney mentioned it would be easier if the City had a “Sunshine” Ordinance. Mayor Esteves further stated he was opening this up to the Council for discussion.</p> <p>Councilmember Polanski said she thought the Council had discussed considering a Sunshine Ordinance so there would be no question about releasing employee salary information if it comes up each year, it went along with the Open Government Ordinance, and she was fully in agreement that the City Attorney bring back an ordinance.</p> <p>Vice Mayor Dixon said she was in total agreement and thought that it followed up on the Council’s unanimous agreement at the last Council meeting; she thought it was a good way to begin the next 50 years to have a Sunshine Ordinance, not necessarily just for this but to be able to add to it.</p> <p>City Attorney Mattas said the Council could use this as a start, as a second point in the Open Government Ordinance and if the Council wished to further look at Sunshine Ordinances in a broader context, it could do that. Vice Mayor Dixon said she was supportive of that.</p> <p>Mayor Esteves said the description suggested that the Council should direct staff to compile the various sunshine ordinance provisions and review the City’s MOUs with the City’s employee organizations and the City’s personnel rules; he thought it had already been done and inquired about the reason. Mr. Mattas responded the Council wanted to see an ordinance come back that would clearly specify that the compensation type information released this year was a public record and if another request came in, it could be responded to quickly; there are Sunshine Ordinances in many communities but they differ in the way they are worded; he understood the Council’s direction to make it clear that this information could be made available but he also wanted the Council to understand the various options out there and to be fully informed.</p> <p>Mayor Esteves said he thought the Council had already done its homework and that an actual ordinance would come back so that the Council could move faster.</p> <p>Councilmember Livengood said he didn’t see any need to rush this since the Council had just released the information; he thought it was important to go into this with the support of the represented employees; he liked the idea of doing a complete review and having buy-in; and he thought it would be more appreciated by everybody if we take a more inclusive approach.</p>
------------------------------------	---

Councilmember Livengood further stated he would prefer the original recommendation to take this in a more methodical approach and didn't see why it has to be done in two weeks.

Mayor Esteves said he thought it had already been discussed but would go with another review of the MOUs with some deadlines or schedule rather than dragging it on and on.

City Attorney Mattas said if the Council desired, he could assemble an ordinance very quickly and make it available for discussion with employees and be back to the Council in two meetings.

Vice Mayor Dixon said she thought having two meetings to prepare was more than adequate; she liked the idea of being inclusive but didn't want this to get lost like the initial request from the Post got lost.

MOTION to direct staff to come back to the Council in two meetings with a proposed ordinance, after review of employee MOUs with the City's employee organizations and the City's Personnel Rules.

M/S: Esteves, Polanski.

Ayes: 4

Absent: 1 (Gomez)

5. Library Service Reductions

City Manager Wilson reported this item was brought forward by Vice Mayor Dixon based on information received from the Joint Powers Authority that runs the library and their plan to close the library on Mondays, beginning October 11, because of the need to reduce costs.

Principal Analyst Cindy Maxwell reported that Vice Mayor Dixon was a member of the JPA and at its last meeting, they voted to close all libraries on Mondays beginning in October to save \$1.1 million because of the effects of the State budget. Ms. Maxwell further reported the library is currently open 62 hours/week; closing on Mondays will reduce that to 53 hours/week; Milpitas averages over 2,100 visitors everyday; Mondays for the Milpitas library is the third lowest visitor day but the second highest in the number of items checked out; most affected would be students in the afternoons and residents who do not have access to computers at home or work; and two libraries close to Milpitas open on Mondays are Fremont and San Jose Berryessa. Ms. Maxwell said staff was recommending (1) looking at the feasibility and cost of extending library hours Tuesday through Sunday to help compensate for the closure on Mondays; (2) evaluating the need for alternative homework and study space for students on Monday afternoons; and (3) initiating an evaluation of alternatives to the JPA for future Milpitas library operations.

Vice Mayor Dixon said part of the problem that has made this a more deepening problem within the County was the failure to pass the bond measure in March; the current tax measure expires in June 2005; and the JPA may end up moving back to the original tax of \$33 even though it isn't enough. Vice Mayor Dixon shared some of her frustrations serving on the JPA commenting at one point there was some support for looking at using some of the technology funds set aside (\$10 million); the discussion then centered around the biggest bang for the buck and the Count Librarian and her staff determined the only way to do it was to have all the libraries close on the same day. Vice Mayor Dixon said she had asked for information if the City of Milpitas used supplemental funds to keep its library open but never received that information or any support. Vice Mayor Dixon expressed support for the three recommendations from staff and commented that Milpitas did look into becoming its own library authority a few years back.

Councilmember Livengood said he understood everything that had been explained except why can't this community step up and keep our library open on Mondays; there was something that didn't ring true; he thought Milpitas should insist on getting the information (how much it would cost to keep the library open on Mondays) commenting that this community has always stepped up to fill the gap. Councilmember Livengood further stated he didn't have a problem with the recommendations but would like to pursue talking with the County Library and

getting that information because he was not convinced the decision was in the best interest of our kids and our community.

Vice Mayor Dixon said the County Librarian is taking her lead from the Board of Supervisors and there is no support from the County right now. Vice Mayor Dixon further stated the County hadn't heard from the Council collectively so maybe a letter from all the Council expressing the desire to do whatever needs to be done to keep the library open would be appropriate.

Mayor Esteves said he hoped the Council could take some action before October so there won't be a disruption in service.

Councilmember Polanski asked how much rent the City receives from the County for the library building. Finance Director Emma Karlen responded about \$120,000 annually. Councilmember Polanski said she thought a letter was a good idea, or a resolution, to the powers that be and asked where would the money come from if the Council wanted to keep the library open. City Manager Wilson responded it would be General Fund money and cited as an example the two percent from the TOT that was originally secured to build the library but with the Redevelopment Agency, it no longer was needed. Mr. Wilson also suggested all the JPA cities could get together and forego building rents for a year to fund the libraries on Mondays. Councilmember Polanski said she thought that was an excellent idea. Mr. Wilson suggested drafting a letter strongly objecting and proposing that Milpitas needs a way to solve this.

Councilmember Polanski said she would be strongly in support as we have an obligation to our citizens and the people use it all the time; she thought the Council needed to do whatever it could to keep the library open.

Mayor Esteves said there appeared to be Council consensus to keep the library open on Mondays. Vice Mayor Dixon commented that we have to do all the things, noting that the JPA has only been around ten years and while she would hate to recommend it in the near future, there needed to be a "Plan B" to withdraw from the JPA, and that option needed to be kept open.

MOTION to direct staff to write a letter with the points addressed by all the Council, to be signed by the Mayor and Vice Mayor, including recommendations not only about the lease money but strong language about the \$10 million technology money, and look at the three recommendations by staff to look at the feasibility of extending library hours Tuesday through Sunday, to evaluate the need for alternative homework and study space on Monday afternoons, and to evaluate alternatives to the JPA for future Milpitas library operations.

M/S: Polanski, Dixon.

Councilmember Livengood said he would add when we send a representative to a body and they ask reasonable questions about cost, we should get an answer; they should not withhold that information; ask in that letter the information that Vice Mayor Dixon requested be addressed. The maker and second to the motion agreed.

VOTE ON MOTION:

Ayes: 4

Absent: 1 (Gomez)

City Attorney Mattas announced there were three items remaining on the agenda and according to the rules, the Council cannot take up any items after 11:00 p.m.; if the Council wished to move any of the items up, they could do that or carry them forward to another meeting. City Manager Wilson said staff did need the two ethics evaluators appointed and the response to the Grand Jury Report for meeting their deadline. It was the consensus of the Council to continue.

UNFINISHED BUSINESS

8. Gateway Sign Pilot Project

Assistant City Manager Greg Armendariz reported at the last Council meeting, staff presented an action plan to address the objectives of the remaining gateway and entry recommendations of the Streetscape Master Plan; that action plan included bringing forward a conceptual design that refines the Master Plan concept for construction as a pilot project at one of the minor gateway locations identified in the Master Plan. Mr. Armendariz further reported that staff concluded that the recommended location for a pilot project would be Piedmont road, north of Landess Avenue; staff suggested a pre-cast concrete structure; and staff was seeking Council approval of the location for the gateway sign. Mr. Armendariz said the average cost could vary from \$30,000 to \$40,000, the design would be developed during October; and the sign would be bid and constructed November 2004 to January 2005, with funding from the Street Fund.

Mayor Esteves said he thought they would all be done at the same time. Mr. Armendariz responded that concurrently staff would be developing a complete program with the next CIP cycle and would continue working on the other five locations, noting there were some issues regarding right of way. City Manager Wilson added that the Council needed to settle on the design and staff was suggesting two approaches because certain sites wouldn't accommodate a "one size fits all" and this gave the Council a chance to make a choice on that also.

MOTION to approve Piedmont Road, north of Landess, as the gateway sign pilot project.

M/S: Dixon, Livengood.

Ayes: 4

Absent: 1 (Gomez)

NEW BUSINESS

10. Ethics Evaluation Panel Appointments

City Manager Wilson reported the item before the Council was approval of the services of three ethics evaluators recommended by Dr. Shanks and staff was asking for approval so they may be retained. Mr. Wilson noted that Dr. Shanks was working on a fourth recommendation; however, the program could be launched with three so there wouldn't be a gap between the effective date and implementation.

Mayor Esteves said he thought \$50,000 seemed like a lot of money and inquired how much the evaluators would be paid. City Attorney Mattas responded the Steering Committee contemplated paying them by complaint hearing; some of them might demand a higher compensation rate than others; if there are fewer complaints, the cost would be less; and the only mandatory costs were the training at the beginning and the report at the end as the rest was complaint driven. City Manager Wilson added that it would be handled on a piecework basis; staff did not have a figure but was asking to negotiate that and execute the contracts.

Mayor Esteves inquired about the hourly rate.

City Manager Wilson said the amount would differ and suggested this is a process that we have no idea of the volume or the time involved; it was important to get the program in place and use the first year to get it in place and find out how it will work because some experience was needed; staff believed something equitable could be negotiated for the first year; and this was not like most of the work that these folks do so they don't have a basis for how they cost this in their other experiences.

Dr. Shanks said we will have some flexibility because we will have four evaluators but only need three for each case; we don't know what it will be like; we will know in a month; and he thought all of these people were reasonable to the low end of what we would expect to pay.

Councilmember Livengood said he served on a couple of committees with one of the potential evaluators, Barbara Conant, when they were both Mayors at the same time, but he hadn't seen her in many years but did know who she is for disclosure.

Vice Mayor Dixon said she also had met Barbara Conant over the years.

Dr. Shanks responded that just knowledge shouldn't be the issue and clarified that Daniel Purnell from Oakland would be a temporary evaluator; in two weeks Dr. Shanks will come back with two more people he will be presenting for permanent appointment.

Councilmember Polanski said she did know Dr. Riley and met him because he attended some of the workshops. Dr. Shanks said what was really needed this first time was someone who was really good as an administrator and he thought Dr. Riley was able to do that.

MOTION to accept the recommendations of persons to be appointed to serve as Ethics Evaluators and appoint a Lead Ethics Evaluator and two Ethics Evaluators; authorize the City Manager to negotiate and enter into consultant agreements with the persons appointed to serve on the Ethics Evaluation Panel in an aggregate not-to-exceed amount of \$50,000 per year and approve a budget appropriation from the General Fund.

M/S: Dixon, Polanski.

Ayes: 4

Absent: 1 (Gomez)

**13.
Grand Jury Report Response**

City Manager Wilson reported Mr. Means asked that this item be removed from the Consent Calendar and brought forward for discussion. Mr. Wilson further reported Milpitas, along with all members of the Valley Transportation Authority, received a request for a response to the Grand Jury report regarding the VTA and that response was due before the next Council meeting; staff had prepared a response that adopted and mirrored the VTA's response on the two areas Milpitas was asked to respond to.

Rob Means said the VTA Board plans to table all the Grand Jury issues and recommendations and the report said the VTA was not handling the money very well and this BART extension was eating up all the money costing us our ability to do all those other projects we want to do. Mr. Means further stated that he thought the Policy Advisory Committee of the VTA Board was getting ready to do a power play and press against San Jose Mayor Gonzales' single-minded pursuit. Mr. Means expressed concern that the letter just rubber stamped the VTA Board's position that they are not going to do anything about the issue and he objected to that; he thought it was an opportunity to weigh in on one side or the other and said he would like to see the Milpitas Council take a stand for financial integrity and say something else instead of just rolling over with the VTA on this. .

Vice Mayor Dixon responded the VTA didn't table the item; there was a lengthy response from the VTA Board Chair and staff, there were a lot of politics involved in dealing with some of the Grand Jury investigation and only a handful of people were interviewed; many of the issues that the Grand Jury went into have been addressed by the 19 recommendations coming out of the Financial Stability Ad Hoc Committee; and she thought there was forward movement. Vice Mayor Dixon said she understood where Mr. Means was coming from because his whole issue was to promote his personal business of PRT, but there would be room for innovative ideas that have been talked about; suggested that this might be agendized for further discussion, it was not a perfect situation, but this was by no means a kiss-off to table the item.

MOTION to approve the response forwarding to the Santa Clara County Grand Jury.

M/S: Polanski, Livengood.

Ayes: 4

Absent: 1 (Gomez)

ADJOURNMENT

There being no further Council business, Mayor Esteves adjourned the City Council meeting at 11:29 p.m.

Gail Blalock, CMC
City Clerk

The foregoing minutes were approved by the City Council as submitted on September 21, 2004.

Gail Blalock
City Clerk

Date

APPROVED MINUTES
CITY OF MILPITAS

Minutes:	Regular Meeting of Milpitas City Council (Including Joint Meeting with Redevelopment Agency)
Date of Meeting:	August 17, 2004
Time of Meeting:	6:00 p.m. (Closed Session) 7:00 p.m. (Regular Session)
Place of Meeting:	City Hall Council Chambers, 455 E. Calaveras Blvd.

ROLL CALL

Mayor Esteves called to order the regular meeting of the Milpitas City Council at 6:00 p.m. Present were Mayor Esteves, Vice Mayor Dixon, and Councilmembers Gomez, Livengood, and Polanski.

CLOSED SESSION

Mayor Esteves publicly stated the Council would convene in Closed Session to discuss the following items listed on the agenda:

1. CONFERENCE WITH LABOR NEGOTIATORS

(Pursuant to Government Code Section 54957.6)

Agency Representatives: Eddie Kreisberg and Cherie Rosenquist

Employee Organization: LIUNA

2. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

(Pursuant to Government Code Section 54956.9)

Milpitas v. Turner Construction et al.

Santa Clara County Superior Court Case No. 103 CV 008400

3. CONFERENCE WITH REAL PROPERTY NEGOTIATORS

(Pursuant to Government Code Section 54956.8)

Property: 94, 110 and 130 Winsor St. (APNs 028-24-014 and 028-24-015) and 112 North Main St. (APN 028-024-026) and (APN 028-024-020)

Negotiating Parties: Milpitas Redevelopment Agency and Dorothy A. & Ruth A. Winsor

Agency Negotiators: Thomas J. Wilson and Blair King

Under negotiation: Terms and Conditions for disposition or lease.

4. CONFERENCE WITH REAL PROPERTY NEGOTIATORS

(Pursuant to Government Code Section 54956.8)

Property: 86 North Main Street, APN 028-024-025

Negotiating Parties: Milpitas Redevelopment Agency and Juan J. Rodriguez and Rose E. Rodriguez Trustees of the Juan and Rose Rodriguez Family Trust, dated December 18, 2001

Agency Negotiators: Thomas J. Wilson and Blair King

Under negotiation: Terms and Conditions for disposition or lease.

5. CONFERENCE WITH REAL PROPERTY NEGOTIATOR

(Pursuant to Government Code Section 54956.8)

Property: APN #022-08-042 (vacant property south of DeVries/Smith House)

Negotiating Parties: City of Milpitas/Redevelopment Agency and County of Santa Clara

Agency Negotiator: Thomas J. Wilson

Under Negotiation: Terms and Conditions for Disposition or Lease

6. CONFERENCE WITH REAL PROPERTY NEGOTIATOR

(Pursuant to Government Code Section 54956.8)

Property: Vacant Property N. Main Street (APN No. 2208003)

Negotiating Parties: City of Milpitas/Milpitas Redevelopment Agency and Kathleen Cardoza

Agency Negotiators: Thomas J. Wilson and Blair King

Under Negotiation: Terms and conditions for acquisition of property

7. CONFERENCE WITH REAL PROPERTY NEGOTIATOR

(Pursuant to Government Code Section 54956.8)

Property: 163 North Main Street, APN #022-08-041

Negotiating Parties: Mid-Peninsula Housing Coalition, a California Non-Profit Public Benefit Corporation, City of Milpitas, and Milpitas Redevelopment Agency

Agency Negotiators: Thomas J. Wilson and Blair King

Under Negotiation: Terms and conditions for disposition or lease

8. CONFERENCE WITH REAL PROPERTY NEGOTIATOR

(Pursuant to Government Code Section 54956.8)

Property: 120-150 Winsor St. and 116-130 N. Main St.

Negotiating Parties: Milpitas Redevelopment Agency and Dorothy A. & Ruth A. Winsor

Agency Negotiators: Thomas J. Wilson and Blair King

Under Negotiation: Terms and conditions for acquisition of property

9. CONFERENCE WITH REAL PROPERTY NEGOTIATOR

(Pursuant to Government Code Section 54956.8)

Property: A 0.14 acre portion of APN #28-24-017 (198 Winsor St.), a rectangular flag portion of a lot near Winsor St. and Weller

Negotiating Parties: B. Valani

Agency Negotiators: Thomas J. Wilson and Blair King

Under Negotiation: Terms and conditions for acquisition of property

Mayor Esteves adjourned the meeting to closed session at 6:01 p.m.

The City Council meeting reconvened at 7:00 p.m. with Mayor Esteves presiding and Vice Mayor Dixon and Councilmembers Gomez, Livengood, and Polanski present.

CLOSED SESSION

City Attorney Steve Mattas announced that Councilmember Livengood abstained matters involving the City-owned property that includes the DeVries house and potential medical center property (items 3, 5, 7 and 8); with regard to item 3, the Winsor negotiations, the Council, by a vote of 4 to 1, with Councilmember Livengood abstaining, provided direction to staff to proceed with a purchase agreement related to the counter offer that had been provided on the property.

PLEDGE

Members of Troop No. 92 led the Council and audience in the Pledge of Allegiance.

MINUTES

MOTION to approve the City Council minutes of August 3, 2004, including joint meeting with the Redevelopment Agency, as submitted.

M/S: Gomez, Polanski.

Ayes: 5

SCHEDULE

City Manager Thomas Wilson reported the VTA had cancelled the August 25, 2004, BART/San Jose Corridor Committee meeting. Vice Mayor Dixon reported on August 18, 2004, at 2:00 p.m., the Joint Powers Authority for the Santa Clara Library System Finance and Administration Committee would meet; on August 19, 2004, at 8:30 a.m., the City/School District Communication Committee would resume its regular schedule; and at 12:00 Noon on August 19, 2004, there was a scheduled meeting of the VTA Finance Administration Committee at the County.

MOTION to approve the Schedule of meetings as amended.

M/S: Gomez, Polanski.

Ayes: 5

PRESENTATIONS

Mayor Esteves read a proclamation commending retiring Planning Commissioner Dem Nitafan for his many contributions to the community and presented it to Mr. Nitafan.

Mr. Nitafan thanked the City Council and the people of Milpitas for having confidence in him in all the positions he held on City Commissions, and stated it was the pleasure one gets by serving the people of Milpitas.

Gaye Morando, on behalf of the Chamber of Commerce, presented Mr. Nitafan with a Certificate of Appreciation from the Chamber.

Mayor Esteves recognized the visiting delegation from Sister City Tsukuba City, Japan, and introduced the Chair of the City's Sister Cities Commission, Debra Garcia.

Ms. Garcia stated it had been a pleasure to be part of the Sister Cities Commission for the past nine years; this was the ninth visit with Milpitas' sister cities, this one being with Tsukuba City, Japan, and introduced Mr. Kazuhiro Idemura.

Mr. Idemura, on behalf of Mayor Fujisawa of Tsukuba City, Japan, read a letter from Mayor Fujisawa stating that it was a pleasure for Tsukuba City to be sending students to Milpitas and commented on the students' experiences while in Milpitas.

Mayor Esteves respectfully accepted the letter and stated it was with great pleasure and pride that the Tsukuba City delegation was received.

Ms. Garcia introduced Ms. Mieko Tamura who introduced the seven Tsukuba City students and expressed her delight in meeting the Mayor and Council. Third grade student Sumiyo Sato expressed the happiness of herself and the other students for being honored to come to Milpitas; explained that the purpose of the extended program was to learn native English; stated in the future, she wanted to work all over the world by using English; and stated she had a wonderful experience by staying in Milpitas.

Mayor Esteves reiterated the City's gratitude and thanks to the delegation for coming to Milpitas; and expressed thanks for the gifts the delegation presented to the City. Mayor Esteves informed the delegation that Milpitas was celebrating its 50th year and presented the delegation with a souvenir from Milpitas' 50th year celebration.

CITIZENS FORUM

Mayor Esteves invited members of the audience to address the Council on any subject not on the agenda, requesting that remarks, including any visual or technology-assisted presentations of any kind, be limited to two minutes or less, and noted that the City Clerk would be using the timer and when the red light at the podium came on, two minutes would be up.

Ed Connor, speaking on behalf of AARP, announced they were having a 1950's "Sock Hop" in the Community Center auditorium from 6:00 p.m. to 10:00 p.m.; were looking for sponsors; and invited everyone to come out and have fun.

Richard Ruth, addressing the interest of public safety, stated when he left City Hall, going up Calaveras toward Park Victoria, he almost had an incident with a pedestrian; he felt there was a dangerous situation on Calaveras between I-680 and Park Victoria where pedestrians were running across both lanes of traffic, creating quite a traffic hazard; and he thought the City should look at the situation and see if something could be done to mitigate the situation.

Rob Means, addressing the fact that the City has been looking for additional sources of revenue, said he had an idea, similar to the policy of taxing what we don't want and subsidizing the things we do want, and suggested taxing Fox Network News on the Comcast cable. Mr. Means described what he thought was a misinformed public as a result of the misinformation from Fox News Network, commented on research done by the University of Maryland on pre-misconceptions, and thought that by putting a tax on their broadcasting to Milpitas, it would be a way of discouraging them.

ANNOUNCEMENTS

Councilmember Polanski thanked all the members of the community who participated in the Neighborhood Night Out, approximately 20 took place, and she had the opportunity of attending four. Councilmember Polanski said she also attended the opening ceremonies for the Bobby Sox Tournament at the Sports Center along with Mayor Esteves and Vice Mayor

Dixon. Councilmember Polanski commented that there were over 600 young women on the field, and it was wonderful to have them in Northern California for the first time in forty some years.

Vice Mayor Dixon said she was given the opportunity to throw out the first ball at the National Bobby Sox Tournament; was informed there were 1,000 people drawn to the event; and she heard many comments that Milpitas had one of the best looking fields they had ever been to. Vice Mayor Dixon complimented everyone involved in the National Night Out program; the overall comment of the community was that they wanted to continue doing it. Vice Mayor Dixon, referring to something that had occurred at the Bicycle Transportation Advisory Commission meeting, reported that staff had provided a draft update regarding the pedestrian detour that would begin October 1, 2004, and end approximately December 22, 2004, on Piedmont Road where the Hillcrest Division was (between Landess and Yosemite) caused by repair work on a pipe in the existing South Bay Aqueduct which runs underneath Piedmont Road. Vice Mayor Dixon reported the VTA workshop last Friday was probably one of the most word intensive meetings; they were at a point of recommending to the VTA staff which direction to go with respect to possible future taxes, and the vote would be taken at the first meeting in September. Following the VTA meeting, Vice Mayor Dixon said she met with the subgroup that included Milpitas, Gilroy, and Morgan Hill.

Mayor Esteves expressed his appreciation to those involved in the Neighborhood Night Out; welcomed two new businesses into Milpitas: Lee's Sandwiches on Calaveras Boulevard and Santos Beauty Shop at Dixon Landing; announced the planned BART Land Use Tour sponsored by the Silicon Valley Manufacturing Group would be held on Friday, August 27, 2004, from 12:00 noon to 5:00 p.m., and invited everyone to call the Silicon Valley Manufacturing Group (501-7864) to make arrangements to attend.

AGENDA

MOTION to approve the agenda as submitted.

M/S: Gomez, Polanski.

Ayes: 5

CONSENT CALENDAR

Mayor Esteves inquired if anyone wished to make any changes to the Consent Calendar. Councilmember Gomez removed item 17 (Adoption of Ordinance No. 265, Ethics Evaluation Panel) for discussion.

MOTION to approve the Consent Calendar, items with asterisks on the agenda, as amended by the removal of item 17, in accordance with the staff recommendations.

M/S: Livengood, Polanski

Ayes: 5

***3. Appointments**

Approved the Mayor's appointment of Khullat Munir to the Youth Advisory Commission for a term expiring September 2005.

***5. Cultural Arts Support Program Grants for FY2004**

Approved the Arts Commission's recommendations for funding for the Cultural Arts Support Program grants for FY 2004-2005 and allot the remaining balance of \$2,000 to the Arts Commission's Public Art budget for future art purchases.

***6. Family Child Care Assistance Grant Requests**

Approved grant funding from the Individual Family Child Care Assistance Fund to the Family Child Care providers listed below as approved by the PRCRC.

\$350 to Alejandra Araya	\$350 to Sherry Clanton	\$350 to Yan Ding
\$350 to Donna Egusa	\$350 to Kim Lagman	\$350 to Judy Ligon
\$500 to Phyllis Corriea	\$500 to Sik Kwok	\$350 to Samiha Samawi
\$500 to Elba Chagolla	\$500 to Georgette Christopher	\$500 to Fauzia Salim

***7. Youth Sports Assistance Fund Grant**

Approved one organizational grant for the Milpitas National Little League South in the amount of \$1,000.00 as recommended by the Parks, Recreation and Cultural Resources Commission leaving a balance of \$7,000.00 for the remainder of the fiscal year.

***11.**

Approved responses for forwarding to Santa Clara County Grand Jury:

Grand Jury Reports

- (1) Inquiry into Financial and Performance Audits for the County and Cities in the County and

(2) Inquiry into Police Evidence Rooms in Santa Clara County.
- *14.
Police Administration
Building Community Room**

Approved amendment of the facility use policy by the addition of Item 14 for the Community Room at the Police Administration Building to include the following recommended reservation limitations: *In no event shall any group or individual be allowed more than (2) Community Room reservations in a calendar month nor shall any reservation be longer than two (2) consecutive days. Reservations shall not be confirmed more than 60 days in advance.*
- *15.
Hall Park Walkway
(Project No. 5058)**

Approved the budget appropriation of \$30,000 from the Park Fund into Capital Improvement for Hall Park Walkway (Project No. 5058) for the following three changes:

 - (1) The widening of the pathway from five to eight feet,
 - (2) The painting of the lagoon wooden bridge, and
 - (3) The provision of power for the lagoon aerators.
- *18.
Improved Roadway Alignment**

 1. Adopted the Addendum to the Negative Declaration (EIA No. EA2003-1) to include the addition of the southern portion Weller Lane and the northern portion of Winsor Avenue, which have been added to the partial vacation.
 2. Adopted Resolution of Intention No. 7467 to vacate portions of North Main Street/Railroad Avenue, Weller Lane, and Winsor Street for improved roadway alignment purposes.
- *19.
Parallel Force Main
(Project No. 6078)**

Adopted Resolution No. 7468 granting final acceptance and release of the contractor's bond.
- *20.
Solid Waste Program**

Authorized the City Manager to execute the consultant agreement amendment for additional services for \$8,500, bringing the total not-to-exceed amount to \$58,500, with Camp Dresser & McKee for Professional Engineering Services supporting the Solid Waste Program, subject to approval as to form by the City Attorney.
- *21.
Core Natural Gas Sales**

Approved the revised Core Natural Gas Sales and Aggregation Agreement with ABAG POWER and authorized the City Manager to execute the Agreement, subject to approval as to form by the City Attorney.
- *22.
TCG San Francisco
(Project No. 2381)**

Approved Encroachment Permit Agreement with TCG San Francisco, a New York General Partnership to install fiber optic cable into existing Pacific Bell's conduits within the City's right-of-way (Project No. 2381), and authorized the City Manager to execute the same, subject to the approval by the City Attorney as to form.
- *23.
Water Line Repair within
Road
(Project No. 3174)**

Approved Right of Entry Permit with Department of Water Resources (DWR) to enter with all necessary equipment on a portion of Piedmont Road between Pinard Road and Landess Avenue to relocate, replace and repair a 300-foot long section of its existing water line to their line, and authorized the City Engineer to execute the Right of Entry Permit, subject to approval as to form by the City Attorney.
- *24.
Sidewalk Replacement
(Project No. 4068)**

Authorized the City Manager to execute an amendment to extend the agreement to repair City sidewalks, curbs and gutters one additional year with the Robert A. Bothman, Inc. to June 30, 2005, in an amount not to exceed \$175,000.00, subject to approval as to form by the City Attorney.
- *25.
Median Landscape on
McCarthy Blvd.
(Project No. 4170)**

Authorized the City Manager to execute the agreement with Orsee Design Associates to provide median landscaping on McCarthy Boulevard, between 237/I-880 and Ranch Drive (Project No.4170), in the amount not to exceed \$9,500.00, subject to approval as to form by the City Attorney.

- *26.
Document Imaging System
(Project No. 8131)** Authorized the City Manager to execute an agreement with Peelle Technologies for Programming Services and Software Licensing to Expand the City of Milpitas' Document Imaging System to Include Public Internet Access to Non-Confidential Documents (Project No. 8131) in an amount not to exceed \$41,000 subject to approval as to form by the City Attorney.
- *27.
Landscape Maintenance** Authorized the City Manager to execute a contract with Coast Landscape Management in an annual amount not to exceed \$76,074.00 for landscape maintenance services at the McCarthy Ranch Assessment District 95-1, subject to approval as to form by the City Attorney.
- *28.
Sycamore Tree Pruning** Awarded the bid for the annual street tree pruning of the Sycamore trees to the lowest bidder, Anderson's Tree Care in the amount of \$38,250.00.
- *29.
Traffic Signal Cabinets
(Project No. 4220)** Awarded bid for the purchase of the traffic signal cabinets over the next two years to the lowest bidder, Synchronex, Inc. in the amount of \$49,950.00.
- *30.
2004 Street Resurfacing
(Project Nos. 4182 & 4223)** Authorized the City Engineer to execute the Contract Change Order for 2004 Street Resurfacing (Project Nos. 4182 and 4223) to C. F. Archibald Paving, Inc. in the amount of \$57,000.
- *31.
Parc Metropolitan Development
(Project Nos. 3061 & 7076)** Approved payment request by Calprop Corporation in the amount of \$15,179.18 to allow the City to drill a well and pump station within the proposed park site of the Parc Metropolitan Development East Park, East Curtis Avenue (Project Nos. 3061 and 7076).
- *32.
4th of July Fireworks** Approved Recreation Services' request to pay the invoice to "Pyro Spectaculars" in the sum of \$19,500 per the contractual agreement between the City of Milpitas and this company for goods and services provided on July 4, 2004, at the 4th of July "Red, White and Boom" event.
- *33.
Cal ID** Approved CAL-ID (automated fingerprint storage and retrieval system) invoice to the City of San Jose in the amount of \$56,386.
- *34.
Miscellaneous Vendors** Approved the following purchase requests:
1. \$12,008.88 to FJM Bering Truck Center for emergency transmission repairs to fire engine 40 for the Fleet Maintenance Section. (Funds are available from the Public Works Department operating budget for this repair.)
 2. \$6,040.35 to Edward S Walsh Co. for the purchase of twelve 2" multi-head water meters to replenish depleted warehouse stock for the Utility Maintenance Section. (Funds are available from the Public Works Department operating budget for this purchase.)
 3. \$6,765.00 to Konica-Minolta Business Solutions for annual lease payments for five mid sized copiers located at City Hall, Public Works and the Police Department. (Funds are available from various departments' operating budget for this payment.)
 4. \$11,025.00 to the MWH Laboratories for State mandated HAAS and THM water quality analysis for the current fiscal year for the Utility Maintenance Section. (Funds are available in the Public Works Department operating budget for this service.)
 5. \$5,639.42 to Roberts and Braun for the purchase of 28 water and sewer line repair clamps to replenish depleted warehouse stock for the Utility Maintenance Section. (Funds are available in the Public Works Department operating budget for this purchase.)
 6. \$5,084.18 to ACCO Systems for the emergency replacement of a HVAC compressor in the City Hall telephone room for the Facility Maintenance Section. (Funds are available in the Public Works Department operating budget for this emergency repair.)

7. \$5,200.00 to the Milpitas Post to publish Claire Water cartoons every other week for a year to promote the urban runoff program for Utility Engineering Section. (Funds are available in the Engineering Division operating budget for these services.)
8. \$14,190.00 to Alliance Occupational Medicine for new hire exams, DMV medical exams/DOT testing, Workers' Comp exams and first aid medical services for the Human Resources Department. (Funds are available in the Human Resources Department operating budget for these services.)
9. \$6,469.14 to Decision Systems for annual hardware and software maintenance on the EOC Teleminder notification system for the Fire Department. (Funds are available in the Fire Department operating budget for these services.)

PUBLIC HEARINGS

1. Amended Density Bonus Apton Plaza (continue)

City Manager Wilson reported this item still needed additional work and the applicant was requesting another continuance to the September 7, 2004, Council meeting.

Mayor Esteves inquired if anyone wished to address the Council. There were no requests.

MOTION to continue the public hearing on the amended density bonus, 'S' Zone Approval Amendment No. SA2004-7, Use Permit Amendment No. UA2004-2, Land Exchange Agreement to September 7, 2004.

M/S: Dixon, Livengood.

Ayes: 5

2. Public Health Goals for Drinking Water Supply

Principal Civil Engineer Darryl Wong reported State law mandated that a Public Health Goal (PHG) Report be prepared every three years and that a public hearing be held for the purpose of accepting and responding to any public comments on the report. Mr. Wong explained that the goals were established at a higher standard than the City usually tests for noting that California has developed more stringent requirements. Mr. Wong said the City of Milpitas has a very extensive program for monitoring water quality and reported that the City's water supply meets all Safe Drinking Water Standards and complies with all requirements of the State Health Department and the Environmental Protection Agency; however, two of the tests did not meet the Public Health Goals. Mr. Wong provided background information on coliform bacteria (a measure of the bacteria quality of the drinking water), which was not a health issue but may indicate other bacteria in the water; lead was also found in homes built after 1983 but before 1986 (in 1986 there was a change in the Building Code that required the lead solder used in construction of water pipes in homes become low lead content lead solder) and homes before 1983 generally have a film lead built up which protects the pipes from leaching material; and samples found that the Public Health Goal was not achieved. Mr. Wong stated that the Health Department has determined that Milpitas has met the criteria to try to do all it can to control corrosion within the homes and they have not required any further action.

Councilmember Livengood commented that a few months ago the San Francisco Water District changed its approach for disinfectants and went from chlorine to chloramines and there have been some complaints in some of the west valley cities about the affects of chloramines to some of the residents and inquired if Milpitas had received any complaints or concerns from residents about that issue. Mr. Wong said he hadn't heard of any issues relative to health; there were some calls about an adverse affect on tropical fish. Councilmember Livengood said his main concern would be that we monitor any complaints or health concerns from residents because there were some schools of thought that chloramines can contribute to problems like skin rashes and other health issue for people in addition to concerns for tropical fish and asked that as staff proceeded down the road, somebody keeps a close eye on any type of activity that may come from residents about chloramines

Mayor Esteves opened the public hearing and invited comments.

Allison McDonald, Milpitas, said in March 2003, Harder & Company Community Research reported on a study they conducted for the Children and Families Commission of Santa Clara County; they reported that 37 percent of children in Milpitas tested with elevated blood lead levels compared with the countywide average of only 10.9 percent; and asked why are the numbers so high in Milpitas. Ms. McDonald further stated the Report on Public Health Goals for public water systems states that in 2001 lead levels in the City's distribution system exceeded the public health goals set by the State; lead can leach from household plumbing so special samplings were conducted at the test; in 2001 more than 20 percent of the homes tested exceeded the public health goals set by the State; the report states that both the City's water suppliers have provided optimum treatment levels and that further reduction of the values was unlikely; instead, public education was recommended, however, the most recent consumer confidence report, Appendix A in the Council's packet, included no such education. Ms. McDonald further stated that the Report on Public Health Goals also stated that the Santa Clara Valley Water District had implemented optimization of their system and the San Francisco Public Utilities Commission was implementing optimization of their system; this implied that implementation of the plan to optimize the system was yet incomplete; lead is a cumulative toxic substance that can cause a variety of adverse health affects in humans; among other things, relatively low levels can cause delays in normal physical and mental development in babies and young children and deficit attention span, hearing and learning ability in children. Mayor Esteves informed Ms. McDonald that her time was up.

Rob Means, Milpitas, completed Ms. McDonald's statement by stating later this evening the Council will be considering the implementation of a program to support early childhood education in the community; the attachment for that agenda item stated that a significant number of children are arriving for kindergarten without the skills and abilities required; children who are exposed to lead cannot learn; any program the City implements would only be a Band-Aid if lead exposure is allowed to continue; the Council should not be satisfied with over 20 percent of household samples exceeding the Public Health Goal for lead; further testing of household water was scheduled for this fall and the tests would be more extensive and should be scrutinized immediately after completion to see if the improvements predicted by the optimization plans is sufficient or if further action should be taken; other possible sources of lead in the environment should also be investigated. Mr. Means said he thought a serious look should be taken at this before just signing off on tonight's current report.

MOTION to close the public hearing.

M/S: Livengood, Gomez.

Ayes: 5

Vice Mayor Dixon asked Mr. Wong if this was a report that he had readily available to help further understand the possibilities of lead contamination. Mr. Wong asked for clarification of the report and said staff could compare information staff had found and work with any reports that might be available. Vice Mayor Dixon said she wasn't familiar with it and that was why she brought it up as a question. Mr. Wong said staff could find out what the report is and make some determination. City Manager Wilson added that staff would make an evaluation with Ms. McDonald's report and report by memo to the Council.

Mayor Esteves thanked Ms. McDonald for bringing the information forward.

MOTION to accept the Public Health Goals (PGH) Report.

M/S: Gomez, Livengood.

Mayor Esteves said he would like to offer an amendment to look into the report presented by Ms. McDonald. Councilmember Livengood said everyone had agreed to that.

VOTE ON MOTION:

Ayes: 5

JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. Mayor Esteves called to order the regular meeting of the Milpitas Redevelopment Agency,

CALL TO ORDER

meeting jointly with the City Council, at 8:00 p.m.

**RA2.
ROLL CALL**

Present were Mayor Esteves, Vice Mayor Dixon, and Agency/Councilmembers Gomez, Livengood, and Polanski.

**RA3.
MINUTES**

MOTION to approve the Redevelopment Agency minutes of August 6, 2004, including joint meeting with the City Council, as submitted.

M/S: Polanski, Livengood.

Ayes: 5

**RA4.
AGENDA**

MOTION to approve the Agenda and Consent Calendar as submitted.

M/S: Livengood, Polanski.

Ayes: 5

***RA5.
INVESTMENT POLICY**

Adopted Council Resolution No. 7466 and Agency Resolution No. RA227 approving the Annual Investment Policy.

**RA6.
ADJOURNMENT**

There being no further Redevelopment Agency business, Mayor Esteves adjourned the Redevelopment Agency meeting at 8:02 p.m.

The City Council meeting continued.

REPORTS OF OFFICERS & BOARDS**4.
Art in Public Places**

Recreation Supervisor Kathleen Yurchak introduced Arts Commission members Bill Foulk and Robin Hays who would be presenting the item Art in Public Places, and she would also be available for questions.

Arts Commission Chair Bill Foulk reported tonight they were bringing a recommendation from the Commission, noting that each Councilmember should have received a packet (and each packet had a different picture on the front taken by Mareile Ogle). Mr. Foulk said with him were Commissioners Robin Hays, Mareile Ogle, and Harriet McGuire. Mr. Foulk mentioned that Commissioner Linda Rabe was unable to be present and she wrote a letter sending her regrets, as she was to have been one of the main presenters. Mr. Foulk shared some of Mrs. Rabe's main thoughts because she had been all over this issue for several months and had really been the one pushing this down the road. Mr. Foulk said he didn't think Milpitas was doing much for public art compared to some other peer cities in the area but the issue was really one of quality of life and making the City of Milpitas more beautiful, attractive, and inviting; Milpitas has some public art but it was not enough. Mr. Foulk further stated Mountain View has been doing this for many years and was a good model to look at and to have a goal to try to make our city look more attractive the way Mountain View has. Mr. Foulk shared the concept from Mrs. Rabe that art generates art; when there is a lot of art around, it attracts other artists and other projects and seems to feed upon itself once you get the momentum going. Mr. Foulk said they were proposing that the Council put on its agenda an action item to say yes, we want to begin working on developing a public policy to have a public arts program and included in the packet was an example of Mountain View's public art policy that Ms. Hays would go over in more detail. Mr. Foulk concluded by saying the Arts Commission had some fun, they went to Mountain View to look at the art in the brochure included in the Council's packet, and Milpitas may not want to go with the same style they do but he was sure Milpitas would develop its own style, its own way of doing things, and it's own look with the help of the Arts Commission.

Arts Commissioner Robin Hays said Mr. Foulk really touched on most of the points and the one thing that really struck her was that Alameda has 2 percent; Sacramento 2 percent; San Jose has 2 percent; Richmond 1 ½ percent; San Francisco has 2 percent; Mountain View has one percent and they have had that for over 20 years; going through towns like Saratoga and Los Gatos, you see public art all over and it's a beautiful place; people don't get that feeling in Milpitas and we need to change that. Ms. Hays asked the Council to consider that we are lagging behind our peers in adopting this policy to benefit our city and make it a more popular destination; while the Commission was just asking for one percent, it was up to the Council to

decide and if you look at all the cities with two percent, we just need to look at what we can do and we need to look at the long-term effect, the more art you have the more industry, the more businesses will want to come to our city. Ms. Hays concluded by saying the history of fostering art in Milpitas prompted the Arts Commission to recommend that the Council adopt a public art policy based on requiring a specific percentage (one percent of the budget) of large (over one million) CIP projects to be devoted to public art. Ms. Hays noted there are a lot of cities that start out at \$100,000 and that was another amount the Council could look at.

Mayor Esteves thanked the Arts Commission for supporting this arts program, commenting that when he visited the Commission and suggested that some kind of funding program should be developed because there was no way to have significant public art if there are no funds, he had seen it in other cities, and that was why he was glad the Commission listened and supported and came up with this nice art program. The Mayor said he was also glad that he asked the Commission to include this in its work plan.

Councilmember Gomez said he wanted to make sure he understood what the Arts Commission's request was; they weren't asking the Council to adopt the Commission's recommendation as a policy; they were asking that staff look at the issue, bring it back to the Council, look at all the policy ramifications, and then possibly move forward with it. Mr. Foulk said the recommendation just included an example of an existing policy in Mountain View; it would be up to the Council to look at all that and formulate what they think is the appropriate amount. Councilmember Gomez said he was hoping the Commission understood that there were some policy issues that still needed to be looked at. Councilmember Gomez commented that he saw one percent of all CIP projects and asked how does Mountain View define public projects and when you say one percent, does that include something like a sanitary sewer project because he had some concerns. Mr. Foulk responded any capital improvement project where the project budget would exceed one million dollars. Ms. Hays added in that case, it would go to public art somewhere else than on the sewer project; sometimes it's incorporated into the actual structure of what is being built and sometimes it goes into public art; and sometimes it's split between the two and asked if the Council wanted the Commission to come up with a policy for the Council to approve or did the Council want to do some research and make changes on it. Councilmember Gomez said his preference would be for the Commission to do research, look at other cities, look at policy ramifications with some staff assistance, but he was comfortable with what the Commission was asking for and that was to have staff look at the issue, develop a policy, bring it back to the Arts Commission and the Planning Commission, and he was willing to put a time frame on it. Ms. Hays said the Commission really needed to bring it to the Council so that the Council could direct staff. Councilmember Gomez said he was comfortable with what the Commission was asking for, eventually looking at the policy issues, going through the various commissions and bringing it back to the Council in 60-90 days. Councilmember Gomez further stated he did have some concerns about one percent of all projects and would like to see what other cities are doing. Ms. Hays said they are doing that or more, generally.

Mayor Esteves said he thought the Commission was going through the right process, they've come forward and asked the Council on the key issue – the funding; his thought process was that the Commissioners would go back to the Arts Commission and develop the details in terms of policy, site selection, just like what was done with the Phantom Art Gallery, and staff would be working with the Commission in developing the details.

Vice Mayor Dixon commented that they just looked at capital improvement projects and asked Mr. Foulk if they looked at private major developments. Mr. Foulk said he didn't believe that was mentioned in the Mountain View model, but this was our policy. Vice Mayor Dixon said she believed that there was a lot of major development coming in, including the City's own capital improvement; keeping that in mind, she also thought it probably wouldn't be prudent to include major utility projects within that; she believed this was something the Council should look at; she wasn't sure of the percentage and that was where staff would be put to work; and she thought not all art has to be designed from scratch and there are many places you can buy smaller very intricate bronze statues and that was something that hadn't been done to date. Vice Mayor Dixon said she was supportive of this, she was not sure what

the percentage would be, staff needed to put some time into this, and maybe a member of the Commission could work with them.

Mayor Esteves asked the City Manager based on last years projects, if this had been implemented a year ago, what would have been the one percent. Mr. Wilson responded one percent on \$10 million in capital work was approximately \$100,000; staff was projecting to deliver this year, exclusive of the library, around \$14 million in projects, there would be some slippage if you use the \$1 million level, but in just round numbers that was \$140,000. Mr. Wilson said there were a number of ways that could be applied and as the Commission indicated, there was a lot of existing models that could be brought forth for Council consideration that would answer most of the questions presented tonight.

Councilmember Livengood commented that he didn't know whether to give Mr. Foulk or Mrs. Rabe credit but Mr. Foulk made a statement about public art catching on and he thought that was very true, citing as an example the city he works in and how he noticed that public art has become much more prominent in that city; he thought we are way behind and have been lax in looking at public art and requiring it. Councilmember Livengood further stated we might have to have a higher percentage for awhile in order to kick-start this thing, and we should be looking at every project that comes in, we don't want to drive up the cost of housing but we require park fees and in lieu of that building a park and we should always be mindful of that; we should be approaching this from two angles – both from the public dollar standpoint and second, that private developers play a role in this also. Councilmember Livengood said he thought if both those things were done, it should have a pretty substantial impact pretty quick. Councilmember Livengood further stated he wanted to create some urgency and didn't want to wait too long and have too many things bouncing back and forth; this was something that needed to get going quickly; and asked that as part of this procedure, there be some urgency related to this topic and that deadlines be set. Councilmember Livengood also stated that in all likelihood to be effective, we're probably going to have to start off on the higher end of the numbers that were related and maybe later on one percent might do the trick but at the beginning, we will probably have to require more to start getting the presence of art in our community and then the private sector will follow. Councilmember Livengood asked that as part of the motion tonight there be a very strict timeline that we stick to.

Councilmember Polanski said she thought the appropriate forum was, as the Arts Commission was recommending, that we put a public art policy in place with a percentage and thought it behooved the Council to then direct staff to come back with a policy that would meet the City's needs that would be reviewed by the Arts Commission for input before coming to the Council, and she, too, supported the Commission's efforts in bringing this before the Council, she agreed with Councilmember Livengood that a timeline was needed, and would be supportive of putting a timeline and directing staff to come back with a policy that would go to the Arts Commission for review and then come to the Council.

Ms. Hays asked if they could have staff get five to ten policies from different cities, the Commission would be happy to go through those, and come up with one policy or two or three to decide on by the next meeting because they also felt that time was of the essence.

Mr. Foulk said he didn't think he wanted the Arts Commission to be screening policies; he would rather have the staff go through and formulate a policy and bring the Commission one sample policy to look at; the Commission could make recommendations for any changes and give it back.

City Manager Wilson suggested that staff could turn around a first draft of a policy within a short period of time, it was appropriate that the Commission review it and make comments, staff had extensive experience in some of these areas; if this happens here, it would be the fifth city he served in and he had written or been present when they were adopted in four of those cities, so it wouldn't be too difficult to get back with a policy the Council could work with; however, staff wouldn't be able to make it by next Council meeting but 30 to 60 days would be a reasonable time to be able to have something to the Commission to make a

recommendation back to the Council and, clearly, the Commission has the responsibility of making any recommendations with regard to a policy.

MOTION to direct staff to draft a policy based on the Council's comments, run it by the Commission, and bring it to the Council within 30-60 days.

M/S: Gomez, Polanski.

City Manager Wilson expressed concern for 30 days, commenting that he knew staff couldn't bring it back in 30 days but could get it within the 45-60 day range.

VOTE ON MOTION:

Ayes: 5

UNFINISHED BUSINESS

8. Pre-Kindergarten Kit Pilot Program

Recreation Services Manager Bonnie Greiner reported she was present to introduce a collaboration of City staff and officials and representatives of the Milpitas Unified School District who have been working together since last September as a joint City/School District Committee towards the feasibility of implementing a Pre-Kindergarten Education Kit Pilot Program with the emphasis on early child care education; the joint committee heard and evaluated presentations from four school readiness agencies and unanimously selected "Raising a Reader Program" as the best choice to fulfill the original concept of this program. Ms. Greiner explained Raising a Reader was a take-home book bag program that uses a multi-lingual, multi-cultural approach to encourage parents and guardians to read to young children, and showed a sample of the book bag. Ms. Greiner further explained that the pilot program would initially be limited in scope targeting the two lowest performing elementary schools in Milpitas with a 20 hour/week City staff coordinator housed at a school site and providing materials and support to the families. Ms. Greiner said staff was recommending funding this part-time position for \$15,600 and \$19,457 in supplies to purchase program materials, for a total of \$35,057, which will provide materials and staffing to serve 120 pre-kindergarten students.

Dr. Karl Black, MUSD Superintendent, thanked the Council for considering this proposal and staff for their excellent work in this area, commenting that you hear a lot about closing the achievement gap and what research has found was that the achievement gap begins prior to kindergarten. Dr. Black said he hoped through this, noting that it was not a pre-school program, to try to help those students to close that gap and put them on equal footing; looking at it as a pilot program, Raising a Reader was a nationally known research-based program; and he was very excited about it and hoped the Council would support it. Dr. Black commented that it was a wonderful partnership again between the City and School District for the good of the children of this city.

Vice Mayor Dixon commented that this was one of the many projects she and the Mayor have been working on through the City/School Communication meetings; she was able to sit in with staff the day the different groups were brought in, and she was very impressed with the groups that responded; they felt this particular group served a lot of functions; a three-year pilot program was needed in order to see the increases; this was also a win-win situation in that it not only assists the children in these two particular schools but she thought it was a major bonding factor with parent and child.

Councilmember Polanski said she thought it was a wonderful project and was curious how you will go about actually doing this or matching this up with the child. Childcare Coordinator Toby Librande said she didn't have those details yet; part of the procedure was to see if this was something of interest and should it be funded; then part of the person's job responsibility will be to identify families.

Emily Simas, representing Raising A Reader Program, said Raising A Reader varies in each community and is designed to meet the specific needs of each community; part of the budget includes a three-day coordinator training at which time the staff person hired will have an opportunity to be trained in the Raising A Reader Program as well as building a community-

wide literacy movement; they'll also have access to a network of early literacy professionals who are using the program in their community and they will work together with your staff person to help find the best possible way to implement the program.

Councilmember Gomez commented that sooner or later a future Council will have to decide whether or not they want to expand this program and asked Dr. Black how will we know at that time if this was successful or not. Dr. Black responded we would take a look at our kindergarten readiness assessments that we currently get, track those results and track these children and again, that was why the three-year pilot so the data can be compared.

Addressing Councilmember Polanski's question, Dr. Black said the resources of the District will be part of this, the District liaisons will be part of this, the assessment program and Ed services programs will be part of this and working with the individual schools to identify families and siblings and be able to make those connections.

Mayor Esteves said this was a very worthwhile and valuable program because just exposing the pre-kindergarten students to books, especially those who may not be able to afford them, was a value itself.

Vice Mayor Dixon said she was very pleased to be able to add this to the long list of partnerships; this was truly a partnership because the school will be partnering up with whatever we need as far as the support system to the coordinator.

MOTION to increase the Preschool Budget Function 163 by \$19,457 for the purchase of Raising a Reader program materials and supplies and to increase the Preschool Budget Function 163 by \$15,600 for a part-time 20 hour per week employee to oversee and implement the program.

M/S: Dixon, Polanski.

Ayes: 5

9. Council Handbook

City Attorney Mattas reported on June 16 the Council provided direction to prepare a City Council Handbook following Council comments; the Council also directed the City Attorney to work with the City Attorney Subcommittee to prepare a draft version of the handbook for Council consideration; and as part of the agenda packet, the Council received a binder that included the draft Council Handbook and the Handbook itself included a wide variety of topics. Mr. Mattas reviewed the 12 topics covered in the handbook. Mr. Mattas reported the City Attorney Subcommittee reviewed the document and recommended the Council adopt the handbook with two specific follow-up issues: (1) a recommendation that the Council direct staff to include on the Council's agenda in January a discussion of Council vision and goals (to be able to look at that on an annual basis and to be able to establish the goals of the Council for the next year) and (2) to further review the section of the handbook identified as "Reimbursement for City functions" to confirm that the procedures for expenditures out of Council discretionary funds are acceptable.

Councilmember Polanski commented that from the Subcommittee's perspective, it was interesting because the Attorney had provided a number of sample handbooks from other cities and the attempt was to draw from the other handbooks; having all the policies in one place would not only help Councilmembers but also help the public.

Vice Mayor Dixon said the Subcommittee's goal and intention was, as Councilmember Livengood had brought up, to be an accepted practice; when doing the research, the Subcommittee found that Milpitas was one of the few cities that didn't have a handbook; and over a year ago she had asked to have at least a book of policies for the Council because policies come and go and fall through the cracks and when tenure takes over and employees leave, history is lost, so having everything come together in one policy book was an advantage. Vice Mayor Dixon further stated the City Attorney brought up reimbursement, and this was just for the Council's benefit to discuss it. Vice Mayor Dixon commented that she thought the handbook was very self-explanatory, very user friendly, and what the Subcommittee wanted tonight from the Council was to go through the handbook and answer any of the Council's questions.

Councilmember Livengood commented that most of the information in the handbook was pretty standard, some follows state law, and others codified and clarified what policy has been for some time; however, he had some questions regarding opening Council mail and expressed concern that some constituents, when they write a letter to a Councilmember, assume that the Councilmember will open it and they don't always put something on the front that says "personal" or "confidential" and he was worried about information or letters not intended to fall into the hands of City staff but intended specifically for the Council; he would rather see a system that is voluntary. Vice Mayor Dixon said they did talk about this and felt that recently there had been dialogue about emails being public documents; if an email is a public document, then it made sense that any correspondence sent to a Councilmember becomes a public record. Councilmember Livengood said he didn't have a problem with that, but to his knowledge, the City Manager wasn't going through everybody's email boxes and pulling out emails; if there was a public records request, then obviously they would have to respond to that. Councilmember Livengood said he was a little nervous about mail that's addressed to a Councilmember being opened by somebody and the person that sent it had an expectation that wasn't what would happen.

Councilmember Livengood said his second concern related to the requirement that proposed Council correspondence from individual Councilmembers or Mayor on City stationary be sent to the Council in draft form prior to release; it was a freedom of speech issue and he thought Councilmembers should feel free to express their opinion in a letter and if other Councilmembers don't like the opinion, then they can write their own letter countering that opinion. Councilmember Livengood said he did not agree with a process by which every Councilmember must submit to others their letters for their approval.

Councilmember Livengood, referring to page 8, Equipment and Supplies Provided to the City Council, said he was fine with everything but the credit card, wasn't sure what that meant, and commented that there was always a span of control issue with credit cards. Vice Mayor Dixon said she had a major problem with members in the past, in particular a mayor, who walked around with a credit card and it was abused; the purpose of this was to inform Councilmembers that there are credit cards in their names but maybe the wording needed to be more explicit; the credit card is to be signed out, there are guidelines as to what it can be used for, and then all receipts come back with the credit card and returned to the City Manager. Councilmember Polanski said she found out there was a credit card in her name when she went to the League of California Cities meeting last year, and it was a surprise to her; this way it would be in a policy what it is for.

Councilmember Livengood said the only other thing he had a problem with was on page 12 relating to Council conduct with the media that Councilmembers should advise the entire City Council in advance if they plan to submit a letter to the media; he felt this was stifling free speech and Councilmembers should always feel free to discuss issues with the press, to write letters, it was a way to express ourselves, and our constituents expect it. Councilmember Livengood further stated he thought that was infringing on free speech to a degree that he would have to notify somebody that he had something to say. Councilmember Livengood commented that other than the four things he brought up, the rest of this was all fine, it did, in fact, have some very important issues in it relating to things like how Council meetings should be run, and that was especially important to new Councilmembers.

Councilmember Polanski commented that this (page 12, Council Conduct) came from one of the sample handbooks, and the intent was in no way to take away freedom of speech but was actually something she pulled from her experience with the School District; the District had something on its agenda on how we conduct ourselves and one of the things was that when a member of the School Board was going to be writing a letter to the editor, they would notify their colleagues, not asking for permission but so if they sent the letter, if the press contacted them, they knew about it; the intent was to inform the other members as a courtesy and not to fetter freedom of speech.

Mayor Esteves, referring to page 6, that Councilmembers or the Mayor should advise the chair or applicable City Council representative before attending a board or commission meeting

commented that some times he stops by to say hello to everybody and speak under Citizens Forum. City Attorney Mattas explained the intent whenever "Councilmembers" was used incorporated both Councilmembers and the Mayor and the final version would pick up that terminology. Mr. Mattas said the intent was also that if one was going to attend a board or commission meeting where another Councilmember was the representative, they simply let them know they're going to do that so that they understand that someone's coming.

Vice Mayor Dixon said the Subcommittee talked about courtesy and protocol and she wanted it made very clear that what you see before you was not created from scratch; the Subcommittee went through several cities' policy books and chose what most of them do as a majority; the running theme through most of the handbooks was protocol, respect, and courtesy and the Subcommittee felt in particular this tied into the past several months worth of work on the Ethics Code. Vice Mayor Dixon addressed Councilmember Livengood's comments on page 12, Conduct with the Media, by saying there was also a financial responsibility that each one of us takes when any issue happens where we take the risk to go out and speak to media, not that speaking to media is wrong, but cited a very expensive lawsuit in 1997 resulting from a Councilmember speaking to the media; and there never was an intent to impede free speech.

Mayor Esteves said he thought the Handbook was a very good resource for everybody as to how the City operates and because he really wanted to pursue this Handbook, suggested taking out those small portions where there were some problems, they could come back to the Council and vote on the rest. Vice Mayor Dixon asked for clarification that the Mayor would like to bifurcate out Council Correspondence to Others; she thought there was Council agreement that Councilmembers would open their own mail; and on page 8, direction that more explicit language was needed about credit cards. Councilmember Livengood said upon hearing some of the comments from the committee, he thought he could live with advising the Council in advance if a Councilmember plans to submit a letter as long as it's just an advisement; the other thing he would ask would be to give the Council a central place to advise, a clearing house, such as the City Clerk, who would provide the information to the rest of the Council; if that was in there, he could leave page 12 alone. Mayor Esteves said he would like it to be a courtesy advisement. Councilmember Livengood said the only other ones left for him were page 6, Correspondence; if that was removed, he could support everything else. City Attorney Mattas asked for clarification on the last discussion about advising of letters to the media, the advisement would go to the City Clerk that the letter will be sent and asked if the letter would be provided to the City Clerk. Councilmember Livengood responded just the subject matter and that it would be submitted, commenting that a Councilmember also couldn't control when that letter, or if that letter will be printed.

MOTION to approve the draft City Council Handbook with all the corrections duly stated tonight and direct staff to include consideration of a vision and goals statement on the City Council agenda in January 2005.

M/S: Dixon, Livengood.

Ayes: 5

RECESS

Mayor Esteves recessed the City Council meeting at 9:26 p.m. The City Council meeting reconvened at 9:35 p.m.

10. Gateway Signs Report

Acting Planning & Neighborhood Services Director Tambri Heyden reported that at the last Council meeting, the Council requested a report on gateway signs; in the Streetscape Master Plan, there were suggestions for 19 general locations and concepts for gateway and entry treatments through the use of signage or landscaping or a combination of both. Ms. Heyden further reported several actions had been taken to date regarding implementing various policies of the Master Plan such as constructing of the entry monument at

Tasman/Alder, development of gateway concepts for Midtown and streetscape plans for Main and Abel, coordination with Caltrans and VTA to restore funding for landscaping of the 880/237 interchange, design of construction plans for an entry monument on the east side of McCarthy Blvd near I-880, and the population figures on signs entering the City had been updated. Ms. Heyden reviewed the next steps staff was proposing to implement the remaining gateway and entry elements of the Master Plan.

Vice Mayor Dixon said she appreciated the speed with which staff moved on most of this; she thought the four bullets as to the next actions were great; she liked Councilmember Livengood's idea when he brought up investigating with the Great Mall to utilize the big barren signs out there; and it was her hope that at least the Planning Commission would be included to look to adding flexibility to the Sign Code.

Mayor Esteves said the way he understood the Economic Development Commission's goal, it was to have this implemented as a reality; he thought the list of objectives and plans was great but the reason why the Commission activated this project was that they weren't being brought into reality and he hadn't seen any schedules. Mayor Esteves suggested to make this a reality, staff should be directed to come up with an implementation plan on how do we start constructing these one at a time.

City Manager Wilson said that was what staff intended to bring back to the Council but with the two week turnaround, staff didn't have that yet but would provide the Council with an implementation plan and, as Ms. Heyden indicated, also funding sources noting that the first part would come back in September with a pilot local gateway plan along with updates on work that would be done; and the CIP would be the vehicle to give the absolute implementation and the funding sources for the full plan.

Ray Maglalang, Economic Development Commissioner, showed some pictures he took of the various old signs on Piedmont, Milpitas Blvd, and Landess, of what was seen now and said it needs to be changed.

Vice Mayor Dixon inquired if there was a process to redesign the population signs, could the City redesign the signs, or was it out of the City's control. City Manager Wilson responded they were the City's signs. Vice Mayor Dixon said it would almost seem appropriate, if the Council was willing, to look at designing a new logo for the signs, noting it was the City's 50th anniversary and maybe this could go to the Arts Commission, the CAC, the Planning Commission, and the Economic Development Commission to see if there was a desire to put a committee together to see if there was a desire to give us an identity. Mr. Wilson said staff might make a proposal back and include that, as the Vice Mayor indicated, in the entire concept and then the Council could decide how they want to go about it.

Councilmember Gomez said as he explained last time, he would be a no vote on this because his preference would be to wait for the consultant report to come out.

Councilmember Polanski said she had no problem redesigning the population signs because she saw those signs as something that the City needs as well as monument and gateway signs.

Mayor Esteves recognized the Economic Development Commissioners present in the audience Chair Diane McDonough, Frank De Smidt, and Ray Maglalang and thanked them for being present.

MOTION to note receipt of the report (direction had been given to staff).

M/S: Dixon, Polanski.

Ayes: 5

NEW BUSINESS

12. Public Records Request Employee Salary Information

City Attorney Mattas reported this item was for the Council's further consideration and related to the request of the Milpitas Post, which had been denied as there was no document that contained all of the information requested and the Public Records Act did not require the

City to prepare such a document; at that time, the Milpitas Post was advised that staff would be looking at the request in light of the case law that had come out since its last request; the Council had been advised as to the City Attorney's office's interpretation of the requirements that had arisen as a result of the Priceless decision and the decision out of Los Angeles regarding Peace Officers; subsequently, in June, the Council provided direction with regard to releasing the information to the Post and also providing notice to the employees. Mr. Mattas further reported the information was prepared, the employee unions were advised and responded with no objections to the information being released; the information was released in the form the City Attorney's office had prepared; and the Milpitas Post raised the issue as to whether or not the Council's direction was actually more specific. Mr. Mattas apologized to the Council for a misinterpretation of the Council's direction but said he still recommended the Council consider the advice given by the City Attorney's office with regard to the restrictions that the courts had established on the release of information. Mr. Mattas said the email from Mr. Devincenzi to the Council on August 16, 2004, appeared to narrow somewhat the request for gross compensation, which the Milpitas Post defines as base salary and other total compensation by title for Peace Officers, not merely salary ranges; the information that was provided to the Milpitas Post in response to its request for Peace Officers' in particular was salary ranges; the City Attorney's office believed that was appropriate under the present California law as identified in the Los Angeles case and the Priceless decision; the Milpitas Post also asked for gross compensation, which they defined as base salary and other total compensation, exactly like the rest of the data provided in July for all positions that had one employee in each category; when the information was provided, the gross compensation was provided for all single occupant positions and for all the Peace Officers within the City; the exact salary to the position was, however, not attached; the Milpitas Post was given a list of positions and a list of salaries so as not identify individually the employees occupying the positions.

Mr. Mattas said his recommendation would be that, to the extent the Council wanted disclosure beyond what had been provided, that there be an opportunity for notice to the employee representatives so that they may choose to intervene in this process, if they so desired.

Vice Mayor Dixon inquired if Mr. Mattas had said that the practice was prohibited by State Law or court judgment because the Council had received information that the City of Walnut Creek had provided the Post with City PERS contributions and gross earnings for 2003 for regular employees and inquired if Mr. Mattas was saying that Walnut Creek was violating the law.

Mr. Mattas explained the restrictions that case law established specific to Peace Officers and access to Peace Officers personnel records, which recognized an individual's right to privacy for employee salary information and was why many cities had now gone to the process of releasing information by position where all the positions are listed without names; since there were more than one occupant in the positions, an individual salary would not specifically be identified, however, the position's salary would be identified; for single occupant positions, if the position and salary were identified together, then you would be identifying a salary, and it's very easy for someone to identify who the occupant was. Vice Mayor Dixon commented that it looked like Walnut Creek identified everybody.

Mr. Mattas said the information had been provided to the Milpitas Post the year before; the Council also previously received salary information as part of its Council agenda packet; after the Priceless decision came out, the City Attorney's office advised staff that that information should not be included in the Council's agenda packet because of the direction provided by the Priceless decision; the Council still received the information but it was no longer provided in the Council's agenda packet.

Vice Mayor Dixon inquired if it was a public document as it was given to the Council and it was not listed as *confidential*; all Department Heads received a copy, and in all the years of looking at the report, she had not seen it marked private, confidential, or attorney/client privilege. Mr. Mattas responded it was not attorney/client; it was his understanding that it was not marked *confidential*, however, the information was distributed within the City to City

officials, and it was not distributed outside the City. Mr. Mattas commented on the way the issues was approached in different communities, explained that San Francisco had a Sunshine Ordinance which made this type of information public, Oakland also had a Sunshine Ordinance, which took the position that the information was confidential now, and what was effectively the follow-up lawsuit to the Priceless case (because Priceless was purposely settled by the newspapers).

Councilmember Polanski said she was having difficulty because the information had been part of the Council's agenda packet for years; the employees of the City of Milpitas work for the citizens of Milpitas, and the citizens should have a right to know what their employees are being paid; she could understand not having names but it seemed like it was freedom of speech and people's right to know; the taxpayers helped fund the City of Milpitas and paid the salaries; the information had been given out for many years (at least 20 years that she knew of); and, now, all of a sudden, everybody felt there was a right of privacy, but no one challenged it last year when the City did it. Mr. Mattas confirmed there had been no challenges; when the information was released last year, the City had no basis to withhold the information because you had actually provided it as part of City Council's agendas; if the summary report had not been provided to the Milpitas Post, the Post could have simply tabulated documents that were on the public record that were actually part of the Council's agenda packet.

Councilmember Livengood said for him, the overall philosophical point was a relatively easy call because when somebody decides to work for a public entity, there were pluses and minuses associated with that; generally speaking, public employees had a better retirement system, more security, and better benefits than private employees (not always the case, but in most cases it was true); the minus side was that the salary comes from taxpayers and as far as he was concerned, that made it public record; he didn't agree with the public employee groups when they talk about "invasion of privacy" and had a hard time understanding how they're harmed by the public knowing what they make. Councilmember Livengood further stated he found himself on the opposite side of the issue with the public employees; once you get through that, the next argument you have to deal with is what does the law say and right now, he thought the law was a bit nebulous; employees who argue that they had a complete right and expectation of privacy, he would argue that they don't and that the public's right to know exceeded that right of privacy; and until he heard a cogent argument from an employee group as to how they are harmed by having their salaries listed in the paper or their salaries publicized, he didn't have any sympathy. Councilmember Livengood said he thought the Council should proceed to have all the information prepared to be disclosed to the press and anybody else who wants it, advise the employee groups that the Council intends to release it, and get the information out there.

Councilmember Livengood further stated the other document that he had disagreed with before about releasing to the public was the Personnel Status Change Report that provided information on employee promotions and raises; before 1999 (he believed), it was part of the Council's agenda packet just like the payroll register was, and the Council had it, the press had it, everybody had it and philosophically, he always was of the position that the public's right to know superceded what he presumed to be a very limited right to privacy when you're being paid by taxpayers.

Councilmember Gomez stated he would much rather lean on the side of openness than anything else; in listening to the discussion, the only reason he could find as to why the records shouldn't be public was simply we can find a reason not to; his salary was public and had been published in the Mercury News; and he was a firm believer unless there was somebody or something that could prevent some information from being released, it should be public.

Mayor Esteves said he did not understand why a public employee would be unwilling to have his/her salary out there; if he heard a group saying "don't publish our salary", he felt that something was fishy or something was being hidden; if everything was good and clear, we should be proud in telling everybody what it is; so, it was just a matter of common sense.

Mayor Esteves further stated he did not know why the Council was struggling with this issue; he saw salaries in the newspapers all the time; anything the Council does involves some risk; in this case, he was willing to accept the risk; and questioned what would be the greatest liability if this was to be released. Mr. Mattas responded if the Council was to direct and release the information, the Council had been provided a memo by the City Attorney's office, which described liability issues; and he did not feel it was appropriate for him to discuss it in public unless the Council directed him to do so.

Mayor Esteves noted that Mr. Mattas had said there were some alternatives the City could have, such as its own Sunshine Ordinance so it could release the information. Mr. Mattas said the effect of a Sunshine Ordinance in this context would be if there's an argument that there's an expectation of privacy and there is a Sunshine Ordinance that explicitly said that the exact total compensation paid to that employee was a public record - if the City had that type of Sunshine Ordinance, then that would be evidence to support the argument that there was no reasonable expectation of privacy for those employees.

Vice Mayor Dixon said she was pleased in what she was hearing and commented on the work that had been done on the Ethics Code and the Open Government Ordinance. Vice Mayor Dixon further stated she was fully supportive of this; there was a risk to whatever we do in the community (as the Mayor said); you can get sued for almost anything today, and if the City were to hide behind the fear of being sued every time, it wouldn't get anything done for the benefit of the community; she was fully supportive and felt the Council should move as swiftly as possible as there already had been a major delay.

Councilmember Polanski said she agreed with the comments from Vice Mayor Dixon, but before a motion she wanted to see a Sunshine Ordinance on compensation looked at because if this has been done for almost 20 years, then it should be codified so there isn't this turmoil every year when a request comes in; in addition, before the Council makes a motion to do this, she wanted to be very clear that the City Attorney understood the request from Mr. Devincenzi and that it be done within five to 10 days with the notification.

Mr. Mattas read Mr. Devincenzi's email that was sent to the Council and recommended the direction be that staff put together the information and if there were no objections or action by the employee representatives within 10 days of today, the information would be released.

Rob Devincenzi, Milpitas Post, said he appreciated the Council's review of the matter; thought their direction in the email was explicit that the Post was accepting of the majority of the information that was received in the July 2nd document; they wanted all the single employee positions to be matched with the salaries that were jumbled; the second part was that the Post would not receive merely salary ranges for Peace Officers, but that gross earnings be received for Peace Officers. Mr. Devincenzi further stated that the Post would prefer to have them by name, that was what the original request was; at this point, by title would be acceptable also; he felt the main emphasis (just like the report last year) was upon title of the individual; so, that was the main information that the Post would like to be provided; if the Council would like to provide more, obviously, he would be appreciative of that but felt that by title at minimum was what they had asked for.

Councilmember Livengood said it was his understanding that the information would be released, that it would include total compensation, and it will match up the single occupant positions with salaries, and it would include actual compensation for Peace Officers as it would for everybody else, by title and not by name at this point; the only other thing he wanted to add was that he still believed that the employee groups should be advised of what was going to be done; and then, in order to prevent this from coming up every year, an ordinance should be worked on with input from employees on how to do this so that any perceived impacts are minimized.

Isaac Hughes stated "this was a no brainer" and shared his ideas as to how this could be done by assuming that most employees have worked for the City more than a few years and were paid at the high end of the pay scale. Mr. Hughes said he had talked to 400 people about this, received 280 emails, and his newspaper would go to print in three weeks. Mr. Hughes also

said that \$5.29 million had been paid out to payroll in the name of Redevelopment fund activity.

MOTION to direct the City Attorney to take direction as stated by the Council tonight to proceed in the proper fashion to disclose employees' gross compensation and to notify the City employees that this was about to be done.

M/S: Dixon, Gomez.

Mr. Mattas, as a point of clarification, inquired if he understood the motion to be total compensation by position. Vice Mayor Dixon responded total compensation by position; not to use the name, but just the position. Mr. Mattas inquired if this could be accomplished within 10 days, which would be his recommendation. Vice Mayor Dixon said she would say as soon as possible, and if it's 10 days, it's 10 days.

Councilmember Gomez, the second to the motion, agreed.

Mayor Esteves asked Mr. Devincenzi if it was clear. Mr. Devincenzi said he would like to clarify one minor point so that when we're talking about total compensation, gross compensation, we're talking about the same thing; in the Post's request, it was specifically asked to see base salary, other compensation, and then total compensation; and inquired if that was what was being talked about. Mr. Mattas stated that was correct.

VOTE ON MOTION:

Ayes: 5

Mayor Esteves apologized for the long response time for this kind of information, but was glad the Council had come up as one Council on this aspect, and other newspapers were welcome to this kind of public information.

**13.
Surrendered Baby Program**

Fire Chief Bill Weisgerber reported the Safely Surrendered Baby Law, also known as the Safe Haven or Newborn Abandonment Law, went into effect January 1, 2001, and authorized the Santa Clara County Board of Supervisors to designate locations where newborns (less than 72 hours) may be confidentially surrendered without fear of criminal prosecution. Chief Weisgerber further reported that until recently, Santa Clara County protocol only allowed for Safe Haven surrender at hospital emergency departments; however, on August 3, 2004, the Board of Supervisors passed a resolution authorizing all Santa Clara County Fire District stations as California Safe Havens and created a County-wide task force of stakeholders to develop a program of funding, training, and implementation to include all fire stations in the County. Chief Weisgerber said the task force would complete its work in the next 60-90 days with implementation of the "Safe Have" program in October/November 2004. Chief Weisgerber further stated that staff would be coming back to the Council in September with a resolution to designate all Milpitas fire stations as Safe Havens in conjunction with the County program.

ORDINANCES

**16.
Ordinance No. 263
Human Habitation of
Vehicles (Introduce)**

Police Captain Dennis Graham reported in February 2004, several Milpitas citizens complained about a man living and sleeping in a pick-up truck parked in a residential area; one resident complained to the City Council and requested an ordinance be implemented prohibiting human habitation of vehicles on residential streets. Captain Graham further reported that Police staff surveyed several Bay Area cities and found that some have adopted ordinances regulating or prohibiting the use of vehicles for human habitation and the proposed ordinance before the Council would enable the Police Department to address this issue more efficiently.

City Attorney Mattas read the title of Ordinance No. 263 adding Chapter 19 to Title V of the Milpitas Municipal Code prohibiting the use of vehicles for human habitation.

MOTION to waive the reading beyond the title.

M/S: Gomez, Livengood.

Ayes: 5

MOTION to introduce Ordinance No. 263.

M/S: Gomez, Livengood.

Ayes: 5

**17.
Ordinance No. 265
Ethics Evaluation Panel
(Adopt)**

Councilmember Gomez removed this item from the Consent Calendar and stated that he just wanted to remain consistent in his vote on this matter.

City Attorney Mattas read the title of Ordinance No. 265 adding Chapter 40 to Title I of the Milpitas Municipal Code establishing the Ethics Evaluation Panel.

MOTION to waive full reading of the ordinance.

M/S: Polanski, Dixon.

Ayes: 5

MOTION to adopt Ordinance No. 265.

M/S: Polanski, Dixon.

Ayes: 4

Absent: 1 (Gomez)

ADJOURNMENT

There being no further Council business, Mayor Esteves adjourned the City Council meeting at 10:47 p.m.

Gail Blalock, City Clerk

The foregoing minutes were approved by the City Council as submitted on September 7, 2004.

Gail Blalock, City Clerk

Date

APPROVED MINUTES
CITY OF MILPITAS

Minutes:	Regular Meeting of Milpitas City Council (Including Joint Meeting with Redevelopment Agency)
Date of Meeting:	August 3, 2004
Time of Meeting:	6:00 p.m. (Closed Session) 7:00 p.m. (Regular Session)
Place of Meeting:	City Hall Council Chambers, 455 E. Calaveras Blvd.

ROLL CALL

Mayor Esteves called to order the regular meeting of the Milpitas City Council at 6:00 p.m. Present were Mayor Esteves, Vice Mayor Dixon, and Councilmembers Gomez, Livengood, and Polanski.

CLOSED SESSION

Mayor Esteves publicly stated the Council would convene in Closed Session to discuss the following items listed on the agenda:

CONFERENCE WITH LEGAL COUNSEL--EXISTING LITIGATION

(Pursuant to Government Code Section 54956.9[a])

Name of case: McGuire & Hester v. City of Milpitas, Santa Clara Superior Court Case No. 104CV016478

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

(Pursuant to Government Code Section 54956.8)

Property: 94, 110 and 130 Winsor Avenue (APNs 028-24-014 and 028-24-015) and 112 North Main St. (APN 028-024-026) and (APN 028-024-020)

Negotiating Parties: Milpitas Redevelopment Agency and Dorothy A. & Ruth A. Winsor

Agency Negotiators: Thomas J. Wilson and Blair King

Under negotiation: Terms and Conditions for disposition or lease.

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

(Pursuant to Government Code Section 54956.8)

Property: 86 North Main Street, APN 028-024-025

Negotiating Parties: Milpitas Redevelopment Agency and Juan J. Rodriguez and Rose E. Rodriguez Trustees of the The Juan and Rose Rodriguez Family Trust, dated December 18, 2001

Agency Negotiators: Thomas J. Wilson and Blair King

Under negotiation: Terms and Conditions for disposition or lease.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

(Pursuant to Government Code Section 54956.9[a])

Title: Arechiga v. City of Milpitas (WCAB No. WCK 0211975 & WCK 024886)

CONFERENCE WITH LABOR NEGOTIATOR

(Pursuant to Government Code Section 54957.6)

Agency Negotiators: Eddie Kreisberg and Cherie Rosenquist

Employee Organization: LIUNA

Mayor Esteves adjourned the meeting to closed session at 6:01 p.m.

The City Council meeting reconvened at 7:00 p.m. with Mayor Esteves presiding and Vice Mayor Dixon and Councilmembers Gomez, Livengood, and Polanski present.

**CLOSED SESSION
ANNOUNCEMENTS**

City Attorney Steve Mattas announced that the first item on the Closed Session Agenda, McGuire & Hester v. City of Milpitas, the Council, on a 5 to 0 vote, authorized settlement in that matter for \$80,000, of which \$60,000 will be paid by the design contractor in that action; for the other four items, direction was provided to staff and no final action was taken.

PLEDGE	Members of Troop No. 92 led the Council and audience in the Pledge of Allegiance.
MINUTES	<p>MOTION to approve the City Council minutes of July 6, 2004, including joint meeting with the Redevelopment Agency, as submitted.</p> <p>M/S: Dixon, Polanski. Ayes: 5</p>
SCHEDULE	<p>Vice Mayor Dixon reported on Friday, August 13, she had a VTA workshop at 8:30 a.m. and directly after that meeting, there would be a meeting of the Morgan Hill, Milpitas, Gilroy VTA Subgroup.</p> <p>Councilmember Polanski noted that the Terrace Gardens Board of Directors had voted to meet every other month; therefore, the August 26, 2004, meeting had been cancelled.</p> <p>Councilmember Livengood reported the August 12 meeting of the Treatment Plant Advisory Committee had been cancelled at the request of the City of San Jose.</p> <p>MOTION to approve the Schedule of Meetings as amended.</p> <p>M/S: Livengood, Polanski. Ayes: 5</p>
PRESENTATIONS	<p>Mayor Esteves presented a Commendation to the ICCArtICCulators Toastmasters Club #584244 for achieving in its first year the President's Distinguished Club status as presented by Toastmasters International and presented it to Sunil Tomar. Mr. Tomar thanked the Mayor and Council, stating it was a great honor to accept the Commendation and extended an invitation to the citizens of Milpitas to join the Club.</p> <p>Mayor Esteves read Commendations recognizing Casey Pham, John Pham, Andre Pham, and Khang Truong on their achievement in reaching Eagle Scout status. Casey Pham thanked everyone who helped him attain the award. John Pham thanked everyone present and the City for helping his troop grow and extend its services and ideas out to the rest of the community to enhance each and every one of their lives. Andre Pham thanked the Mayor and Council for recognizing the hard work and determination of its citizens. Khang Truong thanked the Mayor for the award and letting his troop use the City's facilities.</p> <p>Mayor Esteves read a Commendation recognizing the Milpitas Bobby Sox Allstars participation in the National Tournament of Champions August 7-11, 2004, at the Milpitas Sports Complex and presented it to the President Michelle Kessinger. Ms. Kessinger thanked the Mayor and Council for supporting the league, announced there would be 52 teams from all over California participating in the tournament, and introduced the Milpitas teams: Mini Sox (7 and under), 1A All-stars, 2A All-stars, 3A All-stars #2, 3A All-stars #3, 4A All-stars, and 4A All-stars High School Division. Following a group photograph with the Council, the Bobby Sox demonstrated one of their cheers. Mayor Esteves said it was a momentous occasion for the City and encouraged everyone to attend the opening ceremonies at 8:00 a.m. on Saturday.</p>
CITIZENS FORUM	<p>Mayor Esteves invited members of the audience to address the Council on any subject not on the agenda, requesting that remarks, including any visual or technology-assisted presentations of any kind, be limited to two minutes or less, and noted that the City Clerk would be using the timer and when the red light at the podium came on, two minutes would be up.</p> <p><u>Isaac Hughes</u> said he had a complaint he wanted to express and pointing at the police officer standing in the back of the Chambers, further stated the officer had accused him of molesting girls in the lobby; he had the accusation on tape; then pointing to Police Chief Lawson, Mr. Hughes said Chief Lawson doesn't listen to him when he has documentation that his officers continually deprive him of his Constitutional Rights. Mr. Hughes further stated he had video</p>

tapes, photographs, and police reports and he could prove the police reports were falsified; he had perjury in writing from Trisha Stewart stating that he was never served the documents he was served for an extension of the TRO; and accused the Council of telling the City Attorney to bring it on him. Mr. Hughes also said he had the right to carry his camera in this public building, he had a right to video and photograph, and if people were uncomfortable, tough. Mr. Hughes, addressing the City Manager, said he was sick and tired of him having the police follow him to the rest room and he had it on video tape that the object of the Protective Order was not here when they did it several times. Mr. Hughes said the purpose of the Restraining Order served no legal purpose other than to harass him.

ANNOUNCEMENTS

Councilmember Polanski commented that the Commissioners' Recognition Dinner, attended by all the Council, was a wonderful experience and she heard a lot of wonderful comments about it; she felt the Commissioners really liked the Cartwheel sculpture located in front of City Hall, which they helped purchase. Councilmember Polanski also commented on the work being done on Ethics, stating that the Community Advisory Commission was instrumental in bringing it before the Council, and she had been invited to participate on an Ethics Panel at the League of California Cities Conference in September. Councilmember Polanski reported the 50th Anniversary Committee would have a booth at the Milpitas Art & Wine Festival on August 21-22, where there would be a historical display and the 50th Anniversary books would be sold; there would be book signing guests, including Councilmembers and authors of the book, on both days from 11:30 a.m. to 1:00 p.m.

Vice Mayor Dixon reported that within the past two weeks, the Executive Lions Club's President, Don Ryan, had stepped down and new President, Ray Magalang, was installed on July 22, 2004.

Mayor Esteves said he had the pleasure of attending the opening of the current Phantom Art Gallery, where Vietnamese embroidery art was featured, and encouraged everyone to stop by the Community Center to view the exhibit. Mayor Esteves further stated he had a copy of the 2004 Report on the Public Health Goals for Public Water Systems and read the summary of the report for the benefit of the audience. Mayor Esteves said he had the honor of being a guest at an International Tournament of Abacus held in Milpitas, and thanked them for selecting the City of Milpitas and for sponsoring the great event for young children. Mayor Esteves acknowledged and congratulated Ray Maglalang for being selected the new President of the Filipino-American Realtors Association.

AGENDA

MOTION to approve the agenda as submitted.

M/S: Gomez, Polanski.

Ayes: 5

CONSENT CALENDAR

Mayor Esteves inquired if anyone wished to make any changes to the Consent Calendar. Mayor Esteves removed item 6 (Economic Development Commission Prioritization of Subcommittee Plans) for discussion.

MOTION to approve the Consent Calendar, items with asterisks on the agenda, as amended by the removal of item 6, in accordance with the staff recommendations.

M/S: Gomez, Polanski.

Ayes: 5

***5. Appointments**

Approved the Mayor's appointments as follows:

Citizens Emergency Preparedness Advisory Commission: Appoint Michael Berryhill to the Alternate No. 1 position (recently vacated by William Dale), for a term expiring June 2006.

Library Advisory Commission: Move Yu-Lan Chou from Alternate 2 to Alternate 1, term expiring June 2006, and appoint Lynne Estandarte to Alternate 2, term expiring June 2006.

Recycling & Source Reduction Advisory Commission: Appoint Steve Ybarra to a business representative vacancy, for a term expiring October 2004.

Youth Advisory Commission: Move Aditya Ullal, Van La, and Charlotte Beard from Alternates to regular members, terms expiring September 2005, and appoint Jay Kumar and Danielle Yee as regular members, terms expiring September 2005.

- *7.
Odor Control**
- Noted receipt and filed Odor Control Comprehensive Action Plan Update progress report.
- *8.
Landscaping for
I-880/237 Interchange**
- Directed Staff to develop a concept and agreement with Caltrans whereby Caltrans would contribute approximately \$2.0 million for the I-880/Route 237 Interchange landscaping, and Milpitas would accept maintenance for a yet to be specified period.
- *9.
Association of Bay Area
Governments (ABAG)**
- Noted receipt and filed information that sewer backflow devices that protect against backups due to main line blockages were available from ABAG at no cost to homeowners.
- *10.
Vacant Positions**
- Approved filling the following vacancies to meet the ongoing service needs of the City: Chief Building Official; Senior Building Inspector; Purchasing Agent; and Planning and Neighborhood Services Department Secretary.
- *14.
Great Mall Parkway
Street Trees and Median
Mulch Renovation
(Project No. 4133)**
1. Adopted Resolution No. 7462 granting a Partial Initial Acceptance of the Great Mall Parkway Street Trees and Median Mulch Renovation (Project No. 4133), except for the Delayed Items, and reduction of the faithful performance bond to \$38,100.00.
 2. Approved Delayed Item Agreement and authorized the City Manager to execute the same, subject to approval as to form by the City Attorney.
- *15.
Selwyn Park Improvements
(Project No. 5078)**
- Adopted Resolution No. 7463 granting initial acceptance of the Selwyn Park Improvements project (Project No. 5078), subject to a one-year warranty period and reduction of the faithful performance bond to \$17,311.00.
- *16.
Piedmont/237, Tract 9148
(Project No. 3064)**
- Adopted Resolution No. 7464 granting partial initial acceptance for public improvements to Piedmont/237, Tract 9148 (Project No. 3064), without reducing project surety bonds.
- *17.
South Park Victoria Drive
Pavement Rehabilitation
Phase 1 (Project no. 4225)**
1. Approved the budget appropriation of \$281,000 for South Park Victoria Drive Pavement Rehabilitation, Phase 1 (Project No 4225).
 2. Adopted Resolution No. 7465 of Local Support.
- *18.
Railroad Crossing Repair
(Project No. 4179)**
- Authorized the City Manager to execute Memorandum of Understanding with Union Pacific Railroad and Santa Clara County, for repair of the railroad crossing at Montague Expressway, Montague Widening (Project No. 4179), in the not to exceed amount of \$50,000.00, subject to approval as to form by the City Attorney.
- *19.
PG&E Easements
(Project No. 4047)**
- Authorized the City Manager to enter into the Joint Use Agreement for PG&E easements, Dixon/I-880 Interchange (Project No. 4047), at no further cost to the City, subject to approval as to form by the City Attorney.
- *20.
Abel/Calaveras Right-Turn
Lane (Project No. 4186)**
- Approved Agreement for Purchase of Real Property, for the Abel/Calavaeras Right Turn Lane (Project No. 4186), in the amount of \$66,000 from N&M Plaza, LLC.
- *21.
Water System Seismic
Improvements
(Project No. 7100)**
- Authorized the City Manager to execute the agreement with Damon S. Williams Associates, for water system seismic improvements (Project No. 7100), in the amount of \$49,805.34, subject to approval as to form by the City Attorney.

- *22.
Fuel Purchases** Approved the amendment to the contract with Valley Oil Company, for fuel purchases, subject to approval as to form by the City Attorney, and authorized the annual expenditure in the amount not-to-exceed \$280,000.
- *23.
Software Support and Maintenance Fees** Authorize the City Manager to approve the payment of the annual software support and maintenance fees to Actuate Corporation, for the Reporting System used by the Finance System through June 30, 2005, in an amount not to exceed \$12,500.00.
- *24.
Software Support and Maintenance Fees** Authorized the City Manager to approve the payment of the annual software support and maintenance fees to Cayenta, for the Financial System through June 30, 2005, in an amount not to exceed \$65,000.00.
- *25.
Construction Projects Equipment (Project No. 8134)** Approved the purchase of two IBM Thinkpad laptops and one HP 5500n network ready printer from Surah, Inc., for Construction Projects Team staff (Project No. 8134), in an amount not to exceed \$10,500.
- *26.
Software Support and Maintenance** Authorized the City Manager to approve the payment of the annual software support and maintenance fee to American Management Systems for the Budget System through June 30, 2005, in the amount not to exceed \$5,900.00.
- *27.
Fleet Maintenance Garage (Project No. 8150)** Authorized the City Manager to execute a contract with Tera Lite, Inc., as the low responsive and responsible bidder meeting all requirements of the bid, for epoxy floor coating application for Fleet Maintenance garage (Project No. 8150), for an amount not to exceed \$26,185.00, subject to approval as to form by the City Attorney.
- *28.
Mission Ridge Radio Site** Approved the installation of a new emergency power generator at Mission Ridge Radio Site by Mission City Contractors in an amount not-to-exceed \$13,170.
- *29.
Purchase Order/Meyers Nave** Authorized issuance of purchase orders to Meyers Nave in the amounts of (1) \$563,000 for general personnel and legal services for fiscal year 2004-2005, (2) \$105,000 for labor negotiations for one bargaining unit and personnel arbitration, grievance and PERB proceedings, and (3) \$350,000 for public works construction litigation expenses.
- *30.
South Bay Water Recycle (Project No. 6093) M-4** Approved Contract Change Order to McGuire Hester for South Bay Water Recycle (Project No.6093) M-4, in the amount of \$20,000.
- *31.
Miscellaneous Vendors** Approved the following purchase requests:
1. \$7,999.36 to DARE America Merchandise for proprietary t-shirts, supplies and awards for the DARE program for the Police Department. (Funds are available from the Police Department operating budget for this purchase.)
 2. \$9,500.00 to Konica Minolta Business Machines for annual maintenance and support for three shared high speed copiers at City Hall for the Purchasing Division. (Funds are available from the Non-Departmental operating budget for this service.)
 3. \$6,090.00 to Peelle Technologies for purchasing of a document imaging scanner, software licensing agreements and annual maintenance to be used by the CIP Project Team to electronically image project documents. (Funds are available from the Senior Center Renovation project (Proj. 8134) budget for this purchase.)
 4. \$24,000.00 to the Milpitas Unified School District for the City's share of secretarial services for the Youth Services Bureau for the Police Department. (Funds are available in the Police Department operating budget for this service.)

5. \$19,500.00 to Economic Driving School for seven driver education classes offered by the Recreation Division. Fees are collected from the participants to offset the cost of the classes. (Funds are available in the Recreation Division operating budget for these services.)
6. \$17,000.00 to Mad Science of the Bay Area for quarterly classes offered by the Recreation Division. Fees are collected from the participants to offset the cost of the classes. (Funds are available in the Recreation Division operating budget for these services.)
7. \$20,000.00 to City of Fremont – Tennis Center for providing tennis instructors for classes offered by the Recreation Division throughout the year per a JPA agreement with the City of Fremont. Fees are collected from the participants to offset the cost of the classes. (Funds are available in the Recreation Division operating budget for these services.)

PUBLIC HEARINGS

1. Weed Abatement

Fire Marshal Patti Joki reported in accordance with the Municipal Code, the County Fire Marshal filed a report and assessment list with the City Clerk on weeds abated within the City; the report was posted and notice of hearing posted and published; and following the public hearing, staff recommended adoption of the resolution confirming the assessments. Ms. Joki noted that representatives from the County Fire Marshal's Office were present in the audience if there were any questions.

Mayor Esteves opened the public hearing and invited comments. There were none.

MOTION to close the public hearing.

M/S: Gomez, Polanski.

Ayes: 5

Vice Mayor Dixon commented that it appeared the number of properties listed this year was fewer than normal. Ms. Joke responded on the average, 140 properties appeared on the list and 70 were abated, but she didn't know how that compared to the previous year. Ms. Joki further commented that this year flyers in multiple languages were distributed with the weed abatement notices. Vice Mayor Dixon commented that there also seemed to be fewer residents on the list so the public education was working.

MOTION to adopt Resolution No. 7460 confirming the assessments.

M/S: Gomez, Livengood.

Ayes: 5

2. Amended Density Bonus Apton Plaza (Continue)

City Manager Thomas Wilson reported this item was continued from July 6, 2004, and the applicant was requesting another continuance in order to allow time to review revisions to the Land Exchange Agreement.

Mayor Esteves inquired if anyone wished to address this item. There were no requests.

MOTION to keep the public open and continue the amended Density Bonus, 'S' Zone Approval Amendment No. SA2004-7, Use Permit Amendment No. UA2004-2 and Land Exchange Agreement to August 17, 2004.

M/S: Dixon, Polanski.

Ayes: 5

JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. CALL TO ORDER

Mayor Esteves called to order the regular meeting of the Milpitas Redevelopment Agency, meeting jointly with the City Council, at 7:39 p.m.

**RA2.
ROLL CALL**

Present were Mayor Esteves, Vice Mayor Dixon, and Agency/Councilmembers Gomez, Livengood, and Polanski.

**RA3.
MINUTES**

MOTION to approve the Redevelopment Agency minutes of July 6, 2004, including joint meeting with the City Council, as submitted.

M/S: Livengood, Polanski.

Ayes: 5

**RA4.
AGENDA**

Agency/Councilmember Livengood requested his abstention be noted for item RA8 on the Consent Calendar, stating that he formerly was a consultant for KB Homes, which was part of that development, and KB Homes was a source of income to him in the last 12 months.

MOTION to approve the Agenda and Consent Calendar as submitted.

M/S: Gomez, Polanski.

Ayes: 5

**RA5.
LIBRARY PROJECT UPDATE**

Capital Projects Manager Mark Rogge highlighted major provisions of the proposed contract with Group 4 for design of the new library, including construction plans and specifications. Mr. Rogge commented on maintaining key persons, completion on-time provisions, examples of performance and possible consequences; the cost control program, scope of work requirements, milestones enumerated in the contract; and the design schedule. Mr. Rogge reported the total design fee of \$3,474,000, was considered reasonable for the scope of the project due to the depth of detail and volume of work and presented a breakdown of the design fee. Mr. Rogge further reported the Library Subcommittee recommended approval of the contract and Wayne Gehrke of Group 4 was present in the audience.

Vice Mayor Dixon commented that she was very please with the way the contract was fine tuned and inquired if the agreement included a delay provision if both parties were in agreement. Mr. Rogge responded the contract could be amended. Vice Mayor Dixon said she thought it was a major improvement that the City now had the approval right for any personnel changes and commented that she thought the contingency amount of 3 percent was fairly low. Vice Mayor Dixon also commented that she thought now was the time to look somewhere on the site for a location for a major piece of art. Mr. Rogge said it was included in the contract but was yet undefined.

Vice Mayor Dixon said she went over some of the issues that were sticking points with the City Hall building and hoped the Council would take the opportunity to really look at this so that if something glaring stood out, it could be addressed as soon as possible instead of waiting. Vice Mayor Dixon asked how the Library Advisory Commission would come into play and if it would have any more active participation. Mr. Rogge responded the Subcommittee would be deciding those roles. Vice Mayor Dixon said she hoped the Commission's talents would be used.

Agency/Councilmember Polanski said she was very pleased to see the detail in the contract and recommended that not only the Art Commission but the Library Commission look at any art work because they have a vested interest in this; she would also like to see any decisions regarding art work before they are implemented so that she can visualize it.

Agency/Councilmember Livengood said he thought this agreement would set the tone for everything else that follows in this project and that was why it was important to do it right; this agreement was clearly a blueprint for success for this stage and the rest of the project.

Agency/Councilmember Gomez asked how often staff would be coming back to the Council. Mr. Rogge responded the Subcommittee would be meeting and bringing items for Council approval probably on a monthly basis.

Mayor Esteves said once the project was in full swing, it could come to the Council twice a month, or at least coming to the Council every meeting was an option.

Vice Mayor Dixon said this really wasn't deviating from what was done when staff took over the City Hall project, and she thought it was important that the public feel like they are a participant and have a feeling of ownership.

City Manager Thomas Wilson said there would be regular reports to the Council, certainly monthly and if more frequent if necessary; in the design phase, it probably wouldn't start off with every Council meeting.

Mayor Esteves invited comments from the audience.

Ray Maglalang inquired about a quality assurance program, such as a critical path schedule, and a third party for a check and balance system. Mr. Maglalang said he thought there should be a person who reports directly to the Council or City Manager to report on the progress. Mayor Esteves commented he thought that would be done by staff. Assistant City Engineer Greg Armendariz said staff also had assistance from Swinerton on board right now to assist in tracking. City Manager Wilson added that the Council had also approved special software to accommodate tracking and staff also had the success it brought to the City Hall building.

MOTION to approve the consulting services agreement with Group 4 Architecture Research & Planning, Inc. for Library design in the amount not to exceed \$3,474,000, subject to approval as to form by the City Attorney.

M/S: Dixon, Polanski.

Ayes: 5

***RA6.** Noted receipt and filed the investment report for the quarter ended June 30, 2004.
INVESTMENT STATUS REPORT

***RA7.** Authorized the City Manager to execute the agreement amendment with Lowney Associates
LIBRARY PREDESIGN in the amount of \$20,000, subject to approval as to form by the City Attorney.

***RA8.** 1. Authorized the City Manager to execute the agreement amendment with JMH Weiss, Inc.,
ABEL STREET in the amount of \$54,500, subject to approval as to form by the City Attorney; and
MIDTOWN IMPROVEMENTS 2. Approved budget appropriation in the amount of \$100,000 from the Developer
PROJECT NO. 8157 contributions into Project No. 8157.
(Agency/Councilmember Livengood abstained.)

***RA9.** 1. Approved public improvement plans and final map;
FINAL MAP, IMPROVEMENT 2. authorized the City Manager to execute the secured Subdivision Improvement Agreement
PLANS, ENCROACHMENT and encroachment Permit Agreement, subject to the approval of the City Attorney as to
PERMIT WITH WESTERN form; and
PACIFIC HOUSING, INC 3. Approved budget appropriation of \$490,000 from Redevelopment Agency Fund to
PARC PLACE CONDOS Capital Improvement Project No. 8168.

RA10. There being no further Redevelopment Agency business, Mayor Esteves adjourned the
ADJOURNMENT Redevelopment Agency meeting at 8:17 p.m.

The City Council meeting continued.

REPORTS OF OFFICERS & BOARDS

3. Mayor Esteves said he placed this item on the agenda after reading about the project because
Project Lifesaver he felt the City should show some support or endorsement; he considered it a very worthwhile
project and the people it served deserved to be helped.

Battalion Chief Americo Silvi said Sgt. George Schifano of the County Sheriff's Department was present to comment on Project Lifesaver but he wanted to first pitch the City's SAFE Program. Chief Silvi reported that SAFE was a citywide program with 104 members and

encouraged residents to contact the Fire Department if they were interested in the program to learn how to prepare their homes, neighborhoods, and as a result, the City in the event of an emergency or disaster.

Sgt George Schifano thanked the Council for inviting him stating that he was very excited because not only did he bring this to Santa Clara County, but also to California; Santa Clara County was the first agency in the State to have Project Lifesaver, a program where a person with some degree of mental handicap, who might have a tendency to wander (Alzheimer and Autistic victims) can be tracked by placing a transmitter device on their wrist or ankle. Sgt.Schifano said if they are deployed, they are able to locate them in an average time of 30 minutes or less; and nationwide there were 900 cases with 100 percent recovery rate and all were found alive. Sgt. Schifano explained that it was the Sheriff's role in every county to operate search and rescues missions; he thought Project Lifesaver would be a good fit for all persons who would benefit; however, there was no budget so funding for equipment was strictly by donations and the staff were all Sheriff's Department volunteers.

Mayor Esteves commented that Sgt. Schifano had presented this program to Milpitas seniors so they were aware of it. Vice Mayor Dixon said she was at the Senior Commission meeting and they were enthusiastically behind this; she thought the City should participate in a public education program to get the word out that this service is available and thought it was a very worthwhile program.

Councilmember Polanski said she thought this was an excellent program, was very supportive, and thought it was a great benefit not only for Milpitas but throughout the state.

Sgt. Schifano showed the Council the device and demonstrated how it worked.

Mayor Esteves asked how someone could get more information on the program. Sgt. Schifano said people could call him and he had some material he would leave. Vice Mayor Dixon suggested putting an announcement on the City's cable channel and putting together an outreach program. Chief Silvi said City staff member Lynette Wilson was serving as the point of contact at the Senior Center.

Mayor Esteves thanked Sgt. Schifano for coming.

MOTION to approve a \$500 contribution to Project Lifesaver from the Council's Community Promotions budget as a gesture of support for this program.

M/S: Esteves, Polanski.

Ayes: 5

4. Planning Commission Vacancy

Mayor Esteves said he placed this item on the agenda so the Council could discuss how to fill the vacancy on the Planning Commission caused by the resignation of Dem Nitafan.

Councilmember Polanski said she thought the process the Council used earlier in her term seemed to work quite well where people would apply and the Council would interview.

Mayor Esteves commented that it was now August and by the time an appointment could be made, it would be October, and the end of December some terms would be expiring.

Vice Mayor Dixon said it would be appropriate to asked Mr. Nitafan to come to a Council meeting to be recognized for his eight years of service. Mayor Esteves said he thought that was planned for the next Council meeting.

Councilmember Gomez said he was comfortable going through the interview process and thought it had also been quite awhile since the Council interviewed, so he didn't have any problem going through the interview process.

Mayor Esteves asked the City Clerk if the Council approved this as a process, what would be the general time line based on legal requirements. City Clerk Gail Blalock responded there was no legal amount of time to advertise for applications or how long the process was; however, the City's ordinance said vacancies must be filled within 60 days.

MOTION to use the same process as used previously for filling the Planning Commission vacancy within 60 days from the date of Mr. Nitafan's resignation.

M/S: Polanski, Gomez.

Ayes: 5

**6.
Economic Development
Subcommittee Plans**

Mayor Esteves removed this item from the Consent Calendar and asked for a staff report.

Senior Analyst Cindy Maxwell reported the Council created the Economic Development Commission in February 2003 to advise on business issues and to design, develop, and implement a comprehensive economic development program for the City; the Commission created several subcommittees to study economic issues in depth; two of the subcommittees, Business Incentives and Nanotechnology and a City Image Subcommittee, produced reports and recommendations that were included in the Council's agenda packets. Ms. Maxwell further reported that two members of the Commission were present in the audience, Ray Maglalang and Frank De Smidt, the Commission divided into three committees, and the Commission's top three recommended priorities were (1) installation of identification signs at major City gateways, (2) development of a nanotechnology incubator project, and (3) development of a City souvenir memento marketing project. Ms. Maxwell noted that the Commission's recommendations, if approved by the Council, would be incorporated into the findings and recommendations of the Economic Development Plan.

Mayor Esteves said he had a different understanding of the recommendation because he was present when it was being developed but these three items were not necessarily just to get incorporated with the Economic Development Plan; it was his understanding that the Commission was very enthusiastic in having these proposals be implemented ahead of the Economic Development Plan because they thought these suggestions would help in enhancing the economy of the City. Mayor Esteves further stated he wanted to support the Commission by at least starting to implement their top priority, installation of identification signs, and he wanted to hear from the Commissioners present as to the desire of the Commission.

Ray Maglalang said he was a member of the Image Committee and cited examples of image problems, such as Dave & Buster's and the Sheraton Hotel's advertising that identified with San Jose and Silicon Valley rather than Milpitas. Mr. Maglalang further stated he then found out that the Streetscape Master Plan included a gateway sign and it was just a matter of implementing it. Mr. Maglalang said they were trying to put Milpitas on the map so that businesses would know where Milpitas is; they were trying to send a message and the only way to do it was to build our own city by creating a new image in such a way that people from the outside will come in.

Mayor Esteves asked if the issue was did the Commission want it to be part of the Economic Development Plan or did the Commission envision presenting it to the Council for implementation. Mr. Maglalang responded they were recommending this be implemented as soon as it could.

Frank De Smidt said the Commission found this to be a very important aspect of giving the greater Santa Clara Valley the highest impression of Milpitas so when people drive into or through, they know they are driving through an important place, Milpitas. Mr. De Smidt further stated he thought this was an important issue that ought to be fast-tracked, there were plans and budget for these in the CIP, and it should be given the highest priority.

Mayor Esteves asked if the Commission envisioned making it part of the proposed Economic Development Plan or implemented ahead of the Plan. Mr. De Smidt responded he got the sense they would prefer it if this could be done sooner and the sooner, the better.

Councilmember Gomez asked staff how far off was this consultant's report. Ms. Maxwell responded the final report was expected in December or January. Councilmember Gomez asked for confirmation that the gateway signs were not in the CIP. Ms. Maxwell responded correct, there was no funding at this time. Councilmember Gomez said it was included at one time in the CIP and inquired about the cost. Ms. Maxwell responded it was \$400,000.

City Manager Wilson said if the Council would recall, there was a plan for a sign on 680 that was rather elaborate but was taken out of the CIP because of the extraordinary cost and finance circumstances at the time; and it was \$400,000 at the time.

Councilmember Gomez inquired how many signs was the Commission looking at. Ms. Maxwell responded she believed all the locations in the Streetscape Master Plan. Mr. Maglalang described the various locations from the Streetscape Master Plan. City Manager Wilson said there were about a dozen.

Councilmember Gomez commented that from his perspective, he knew gateway signs were very valuable but the City hired an Economic Development consultant, and he would like to at least see that report before approving any expenditures for signs.

Mayor Esteves commented that when the committee was discussing this, the consultant was there, and he thought the consultant agreed that this could go ahead of the Plan.

Vice Mayor Dixon said she understood the need for this because of the problems with the existing signs; commented on the signs showing the City's population still at 48,000 or 52,000, and thought those were things that could be addressed right now without waiting for the consultant's report to come back. Vice Mayor suggested getting some type of summary report right now. Vice Mayor Dixon also commented that with respect to the monument sign, she was somewhat critical of it only because that was before the Redevelopment Agency was expanded and money was extremely precious at that point; there also was some difficulty with the design. Vice Mayor Dixon commented that she had a different vision with respect to monument signs and thought there were major ones that should be on both major freeways but scaled down versions, or landmark signs, could be better utilized in other areas of the City. Vice Mayor Dixon applauded the Commission for moving ahead with this and said she would like to get some type of update from the consultant.

Councilmember Polanski said she agreed with the need for gateway signs and identification signs and thought the Economic Development Commission was on the right track in looking at implementing them. Councilmember Polanski commented that as part of the plan, the committee should look at what Milpitas is now, the culturally rich community it has become and ask what kind of design might be the most appropriate to do, a landmark sign versus a monument sign, and where the funding would come from. Councilmember Polanski said she thought this was going in the right direction and the Council just needed to have more information about the budget and other types of gateway signs that would be appropriate.

Councilmember Livengood said in addition to looking at those 12 original locations, the amount of traffic on the freeways shouldn't be forgotten; he thought we should also be looking at ways of using that amount of traffic to enhance marking efforts and cited what Union City had done at Union Landing as an example. Councilmember Livengood further stated that there were a couple of freeway signs erected at 880 and 680 and suggested looking at ways of marketing on them and getting some City messages on them. Councilmember Livengood suggested revisiting the issue with the 12 sign locations, look at freeway signs, and then look at some kind of budget because this was not going anywhere without a budget and it would not be cheap. Councilmember Livengood said he thought it was a good idea but as always, it came down to budget issues.

Mayor Esteves suggested staff come back with more information so that this Council will be able to give more input on the details of this proposal.

City Manager Wilson said staff had a couple of resources and suggested staff come back with an assessment at the next Council meeting and the Council could give direction about securing some money.

Vice Mayor Dixon commented that there were some restrictions as far as the Building Code and the Council may need to be provided with information on the sign program.

Mr. De Smidt said he was very pleased with the comments he heard tonight, the population signs could be brought up to date, and expressed appreciation to the Council.

MOTION to direct staff to come back at the next Council meeting with more information and details about the installation of gateway/identification signs and approve the other two recommendations from the Economic Development Commission to be incorporated into the City's new Economic Development Plan.

M/S: Esteves, Dixon.

Councilmember Gomez said he would be voting no on this because his preference would have been to wait for the consultant's report.

VOTE ON MOTION:

Ayes: 4

Noes: 1 (Gomez)

ORDINANCES

11. Ordinance No. 265 Ethics Evaluation Panel (Introduce)

Acting Planning & Neighborhood Services Director Tambri Heyden reported that on June 1, 2004, the Council approved the Ethics Code and the Ethics Program Implementation Plan, one of the contracts of the implementation letter was the development of an Ethics Complaint Process adopted by ordinance; a short list of evaluators will be prepared for recommendation that will be comprised of three evaluators to sit on the panel with an alternate so they can rotate; and it was the plan to bring a contractual agreement with the evaluators to the Council's September 21, 2004, meeting with the process in place by October. Ms. Heyden further reported the Council had received a handout showing some revisions to the original proposal that was in the Council's packets; the changes would enable quicker turn-around for the decisions (complaint decisions) to be made and for publishing the results of the meeting where the decisions would be heard; and this was important because the system needed to be effective in terms of modifying behaviors that are inconsistent with the Ethics Code. Ms. Heyden proceeded to review the Complaint Process with the recommended Changes.

Ms. Heyden said that the term of office for the evaluators would be four years, and they could be reappointed for additional terms; they could not live, vote, or have a current place of business in the City of Milpitas or be employed by the City nor be a consultant of the City; in addition, the evaluator should not be a candidate for public office in any other city or county and shall not have participated in or made financial contributions to a Milpitas election campaign, and not be employed as a lobbyist. Ms. Heyden further stated the lead evaluator shall be appointed for a one-year term and the last change was that the evaluator would be able to delegate his/her authority, given the quick turnaround; in addition to the duties of evaluating complaints, the last duty of the evaluator would be to prepare a report to the CAC with the recommendations regarding any changes to the Ethics Code, the Standards, and the Process.

Ms. Heyden reviewed the recommendation from the Ethics Steering Committee and the Ethics Consultant that the Council consider Ordinance No. 265, waive reading beyond the title, and introduce Ordinance No. 265.

Mayor Esteves inquired how the evaluators would be recruited and selected. Ms. Heyden responded Dr. Shanks' contract required him to prepare a short list of evaluators for the City to consider, and he was in the process of doing that. Dr. Shanks commented on the kinds of

people he was looking for, people with different expertise such as experience in ethics, someone who would be an adjudicator (a retired judge or somebody with legal experience), someone who has actually run for office but doesn't have connections or ties, and a reasonable, good person, sort of a normal person or someone who lives in the City and is involved and knows how cities really function. Dr. Shanks said he was gathering names right now and after this initial phase, the panel itself would make recommendations to the Council, so it would be self-generating.

Councilmember Livengood said there were two things he needed clarified; first, under I-40-14, Complaints, it referred to violations by members of the City Council, City Commissioners, and candidates for City Council but didn't mention staff or employees and inquired if there was a specific procedure for a complaint against a City employee. Ms. Heyden responded a complaint against a City employee wouldn't go through the panel; it would be forwarded to the City Manager to handle through the customary discipline process.

Councilmember Livengood inquired about the reference by which the evaluation panel would refer to an employee using a pseudonym of some type. Dr. Shanks responded that involved an employee who was potentially a witness to a complaint that involved other people; the Ethics Evaluation Panel would have nothing to do with a specific complaint against an employee. Councilmember Livengood said what concerned him was the potential of a City employee violating the Ethics Code by getting involved in campaigns while on duty, as an example, which was a violation of the Municipal Code; this panel would not be able to have any input on that action and instead it would revert to the City Manager's purview under the Personnel Code. Dr. Shanks responded as he understood it, that was right.

Councilmember Livengood said the other thing that worried him was involvement of the City Council in the midst of a political campaign with an ethics charge against a Council candidate. Councilmember Livengood expressed concern for the Council being injected into a political complaint about an ethics violation when the Council should not be involved in these campaigns (when serving as Councilmembers). Dr. Shanks said the intent was to try to make it so that this panel could bring sanctions without coming back to the Council so the words "criticize, reprove, condemn" were words they could apply by themselves without the Council taking any action. Councilmember Livengood said he was still a little concerned about the potential for some abuse of it right before an election.

City Attorney Mattas addressed part of Councilmember Livengood's concerns stating that there were two parts of the ordinance that weren't referred to by Dr. Shanks that might work to provide some insulation; one was the ability to refer to the Council for further action was discretionary on the part of the Ethics Panel, and there was considerable insulation of the Ethics Advisors once appointed from actually being removed from office (it would take a super majority vote of the Council to do that); so he thought there were two structural protections in addition to the fact that they were supposed to be from outside the City and be experts in this.

Councilmember Livengood asked, for the benefit of the public, for an explanation of the timing issues on ethics complaints during the course of a campaign. Ms. Heyden responded, pointing out that the deadline provision, or point after which no complaints could be filed, had been removed. Councilmember Livengood commented that sometimes complaints are not always that easy to resolve and two days was very, very ambitious; if he were accused of some ethics violation, he'd want a fair hearing and time to prepare for it. Councilmember Livengood inquired what if someone was out of town and couldn't get back in time, would that mean they wouldn't be involved in this process and noted that would never happen in a judicial sense.

City Attorney Mattas said the present structure of the ordinance would require mutual consent of both parties to extend the period beyond three days; if the Council was concerned about the due process effect of that, it could allow for there to be an extended period of time upon request of the object of the complaint and approval by the ethics evaluators; that would vest in

them the discretion to actually be able to assure that there would be appropriate time for the person to be able to come back.

Councilmember Livengood said he agreed with that and inquired if it was possible to give the evaluators more time if they need more information or need to talk to people and can't make a decision in two days; he wanted reasoned, well thought out decisions that come with the benefit of having all the information needed. Mr. Mattas responded the ordinance as written anticipated that the panel would actually make a decision at the end of the hearing; if the Council wanted to be able to provide the panel with either greater time to deliberate or to accept more information, the ordinance could be written in such a way as the panel could decide it wanted to take "x" number of additional days to make its decision, if it felt it needed to.

Mayor Esteves commented that evaluators would serve four years and for him, four years was a little long because he didn't want to develop some kind of relationship like pay back time or something; he preferred to see a shorter period of time so that there would be a change of faces. Dr. Shanks said a common practice on most Ethics Commissions was a longer period of time than four years; he didn't know if there was going to be a huge pool of people who could actually do this; and he thought four years was a good way to start.

City Attorney Mattas said he wanted to clarify one point regarding when the record becomes public; the ordinance as presently written provided that when the lead evaluator has received the complaint and determined it is valid and should be set for a hearing, at that point it becomes public.

Councilmember Polanski commented that a complaint really becomes public depending on who files the complaint and how ethical they are because if the person who files the complaint is also unethical, they will ensure that the world sees it, no matter what the ordinance says. Councilmember Polanski said one of the reasons for doing the ethics and doing all these workshops was to hope that people will not do that.

Councilmember Polanski said she was not sure it should be open-ended, commenting that since she had an ethics charge filed against her in a campaign, she was more aware of some falsehoods that the County Ethics utilized, which was inappropriate; she thought when you're running a campaign or anything, there should be a time limit by which one could file a complaint or an ethics charge; however, asked what if you don't find out about unethical behavior for months afterward, how did the Steering Committee feel about that? Dr. Shanks responded that there was a proposal to do a Town Hall meeting on October 31st, two days before the election where there would be an opportunity to address all the stuff that happens in the few days before an election. Councilmember Polanski said she didn't think October 31st was the best date, being Halloween and people are busy. Councilmember Polanski said she had other questions but was being distracted and wanted to know if there's a member of the public who wished to speak. Mayor Esteves said he would rather complete the Council's discussion first.

Isaac Hughes interrupted and said Dr. Shanks had the public's book so that Mr. Hughes had no knowledge of what the Council was talking about. Mayor Esteves told Mr. Hughes he was disrupting the meeting and then said the Council would continue.

Councilmember Polanski said she thought the process that was outlined was doable, it was something that should be tried to see if it works, and thought trying to find people willing to serve on the panel was going to be very difficult because everybody's connected. Councilmember Polanski recalled her experience commenting that months afterwards she was shocked to discover that the Ethics Panel knew other people who participated.

Councilmember Gomez said he thought at some point the evaluators needed to be asked to disclose if there was a relationship with staff, or candidates, or with commissioners or if they have any relationships with organizations or people who are in the endorsement process.

Councilmember Gomez inquired about the cost of the evaluators. Dr. Shanks said he wasn't sure yet but university professors were generally inexpensive and retired justices doing adjudication would be whatever the standard cost of doing adjudication was. Councilmember Gomez said he had difficulty with the concept of somebody who's being paid by the Council being truly impartial or could somebody whose contract was dependent on the Council renewing it be impartial. Dr. Shanks responded a part of the Code was disclosure and can you be independent if somebody is paying you; he thought that was one thing that argued to shorter terms; he didn't see somebody being dependent on this job for their livelihood and they should have regular jobs and sources of income separate from this; he did expect that there would be turnover on the board,, there would be some self-correction, that this group will become super ethical, and they would be challenging each other on exactly that kind of issue.

Councilmember Gomez questioned whether or not the hearings would be public or closed and referred to a statement "unless otherwise permitted by law." Dr. Shanks responded it was his understanding the hearings would be open. City Attorney Mattas added that he couldn't envision any exceptions under the Brown Act that might allow them to consider something in Closed Session but recommended leaving the language in because of the possibility that the nature of a complaint at some point could be so heinous that you might have need for a Closed Session, but he thought it would be very rare.

Councilmember Gomez, referring to the decisions of the Ethics Evaluators which might include sanctions, public criticism, removal from office, inquired where was the appeals process, where does somebody go to appeal, he didn't see anything addressing that, and it troubled him. City Attorney Mattas responded there was no appeal process; the removal from office section talked about what the panel could do, which was the cease and desist order, order an apology, or use one of these labels (criticism, reprimand, reproach, condemn the action), but that was as far as they could go; beyond that, they could make a recommendation to the Council that may be beyond that, including suspension or removal from office. Councilmember Gomez asked if other cities have appeal processes in place or if the court system would ever be brought into this at all. Dr. Shanks responded in many cities the Ethics Evaluators only recommend to the Council, the Council makes the decision, and there isn't any appeal from the Council decision.

Councilmember Gomez asked what if a candidate just disagrees with the decision of the Ethics Evaluator, what was the recourse or where was the appeal process? Dr. Shanks said that may be something to think about, another level could be added but it was still going to wind up being the best judgment of another couple of people, and the thought was that there wouldn't be a need for an appeal if the process was fair.

Councilmember Gomez commented there was nothing here having to do with ramifications for anybody involved with the City that may disclose information that shouldn't be disclosed or purposely leaks something, citing as an example if the Clerk or somebody else just handed something out that shouldn't be handed out; he thought there needed to be some sanctions built into the system. Dr. Shanks said he thought that would be covered in the Guide to Complaining that will talk about what the grounds for complaint are; if it involved the City Clerk, then it would go back to the City Manager. City Attorney Mattas said if it were actually a City employee subject to the Code of Ethics, as soon as the complaint came in, it would be sent to the City Manager's Office to deal with as a personnel matter. Councilmember Gomez asked what if it was a City employee not subject to the Code of Ethics. Mr. Mattas responded it would be regular discipline.

Councilmember Gomez said when he had his one-on-one meeting, Dr. Shanks said he didn't recommend going this route (of an Evaluation Panel) and asked what changed. Dr. Shanks responded he thought what was being said was that we didn't want to have a board that would become this big deal, this wasn't a legal process, it should be a fair process, but it was not a legal process. Councilmember Gomez said he didn't understand the difference – a legal process and this process. City Attorney Mattas said this was a legal process because it was

written and was a process established by ordinance; it was not a criminal process nor was it a civil court process; it was administered and regulated by the procedures set forth in the ordinance. Councilmember Gomez again questioned whether he misunderstood Dr. Shanks and commented he thought Dr. Shanks said he preferred having a meeting or round table discussion with all the candidates, everybody involved in the election, where they would discuss exactly what went wrong. Dr. Shanks responded that in any city where there's an Ethics Code, there needed to be some kind of an accountability process. Ms. Heyden added that the interviews occurred and she thought in the beginning of the process, it was intended that the implementation would be education; by the time it got to the final code development workshop where accountability was discussed, they really felt that in order to make this work, something stronger than just education was needed.

Mayor Esteves inquired about the liability of the City as a result of the Ethics Panel's actions. City Attorney Mattas said the panel would be an entity of the City, representatives of the City, and so there was the potential that if they did something wholly inappropriate, they could subject the City to some liability. Mayor Esteves asked about the possibility of collecting a filing fee for complaints as a means of avoiding possible abuse of someone filing numerous claims. Dr. Shanks said that was a good question and he didn't know any public jurisdictions that had filing fees for ethics complaints but was something he could find out.

Vice Mayor Dixon said it had been interesting listening to all the comments tonight; this had to be done because we don't take this lightly; the community did not take this lightly; and we have to pause and remember why are we even here; it started because of something that quite a few members of the community felt was not acceptable; she was comfortable with this; she knew the Steering Committee had worked very hard on this; the CAC worked very hard on this; and at least there was a process. Vice Mayor Dixon further stated it may not be perfect, no process was 100 percent perfect, and she liked the idea that it would come back to the Council in six months or a year to see what's working and what's not.

Isaac Hughes said he had been looking all over for the City Council Agenda Packet book that was for the public's use and for some reason, Dr. Shanks took it and while Dr. Shanks was talking about ethics, he couldn't properly aggrieve his government because he wasn't privy to the public information that the City Clerk provides to the public. Mr. Hughes further stated the saddest thing was that nobody questioned Dr. Shanks to make sure that none of the people that will be evaluating know Dr. Shanks and we need to make sure he's never worked with them because he's the person who's going to moderate these questions. Mr. Hughes also said the Council would be opened up to lawsuits that it never would have had before because under the Fair Political Practices Commission and laws, you can basically say anything you want to each other while seeking a Council seat and for the Mayor's seat and they generally can't have any lawsuit against each other or the City.

Acting Planning & Neighborhood Services Director Heyden read the title of Ordinance No. 265 adding Chapter 40 to Title I of the Milpitas Municipal Code to establish the Ethics Evaluation Panel.

MOTION to waive the reading beyond the title and introduce Ordinance No. 265.

M/S: Polanski, Livengood.

Councilmember Gomez said he would be voting against the ordinance because he had some concerns about the appeal process.

City Attorney Mattas asked if Councilmember Gomez was voting "no" on the first or second part of the motion. Councilmember Gomez responded the second motion.

Mayor Esteves said he had been waiting to have an ethical process for everybody and felt very positive about the participants, the candidates, about the Councilmembers, and believed that we have to give this a chance. Mayor Esteves further stated he thought we should be more

optimistic and positive for one another that we'll do the right thing, he was in favor of adopting this process, it obviously wouldn't be perfect the first time, and he appreciated the process and the hard work that was done to develop the process.

City Attorney Mattas said, as he understood the motion, the motion was to approve the document as presented; there was some discussion on the Council about potentially allowing both the accused and the lead Ethics Evaluator to determine whether or not there would be an extension of time to respond as well as when the Ethics Panel itself was making its determination, there was some discussion about whether or not they should have the opportunity to extend the time for their consideration. Mr. Mattas further stated if the Council would like, he could propose some language; if the Council wanted to be able to adopt the ordinance at the second meeting with any revised language, it would have to be introduced tonight with the final language; and if the Council preferred the language as it was, that was what the motion presently stated.

Councilmember Polanski said she was fine with it as it was, but she thought there was going to be a need for additional time. City Attorney Mattas said he had language that he could read that the Council could consider. Councilmember Polanski said she thought the Council should because if the panel hearing was to be held in 48 hours, there might be a Council meeting or a death in the family that would prohibit someone from attending, and it was important that both parties can be there. Councilmember Polanski suggested the City Attorney to read the language to see if she and the second were agreeable.

City Attorney Mattas said the present language required the written consent of the complainant and the accused for an extension; if the Council wanted to consider alternative language, the last line could read: "Provided however, with the written consent of the Lead Ethics Evaluator and the accused, the date of the meeting may be scheduled for a date that is later than three days following the City Clerk's receipt of the complaint." Mr. Mattas said the second change was really geared towards the other issue raised which was whether or not the Panel itself needs more time to get more information or to consider their deliberation and suggested adding the following to Section b of I-40-16: "either one direct continuation of the matter to (a) receive additional information; or (b) allow further deliberation by the Ethics Evaluation Panel; or 2."; the rest of the sentence would be left as it was so the Panel itself would decide whether it wanted to continue the hearing for more information or to continue the hearing so they could have further deliberation time; or, alternatively, if they've heard everything they thought they needed to hear and they want to make a decision, they could make the decision.

Councilmember Polanski said she had no objection. Councilmember Livengood agreed.

VOTE ON MOTION to waive the reading beyond the title: Ayes: 5

VOTE ON MOTION to introduce Ordinance No. 265: Ayes: 4 Noes: 1 (Gomez)

**12.
Ordinance No. 262
Open Government
(Adopt)**

City Attorney Steve Mattas reported before the Council was Ordinance No. 262 for adoption, commenting that normally, adoption of an ordinance was placed on the Consent Calendar but because the introduction was a split vote, the item was not on consent. Mr. Mattas reported the ordinance contained several interrelated provision that focused on the promotion of transparency and accountability for local elected and appointed officials.

City Attorney Mattas read the title of Ordinance No. 262 adding Chapter 310 to title I of the Milpitas Municipal Code establishing regulations governing the conduct of elected and appointed officials and requiring disclosure of interests and contacts.

MOTION to waive the reading beyond the title.

M/S: Polanski, Dixon.

Ayes: 5

MOTION to adopt Ordinance No. 262.

M/S: Polanski, Dixon.

Ayes: 3

Noes: 2 (Gomez, Livengood)

RESOLUTIONS

12. Building Division Fees

City Manager Wilson welcomed Acting Chief Building Official Kevan Irannejad. Mr. Irannejad reported at the July 6, 2004, Council meeting the Council reviewed the proposed re-adjusted fee schedule and directed staff to reduce the fees for remodel/addition projects between 100 sq. ft and 300 sq. ft. by 30 percent; the re-adjusted fee schedule included those changes and the new fees would be effective September 1st.

MOTION to adopt Resolution No. 7461 approving revised re-adjusted fee schedule for Building Division related services to be effective September 1, 2004.

M/S: Dixon, Livengood.

Ayes: 5

ADJOURNMENT

There being no further Council business, Mayor Esteves adjourned the City Council meeting at 10:43 p.m.

Gail Blalock, CMC
City Clerk

The foregoing minutes were approved by the City Council as submitted on August 17, 2004.

Gail Blalock, City Clerk

Date

APPROVED MINUTES
CITY OF MILPITAS

Minutes:	Special Meeting of Milpitas City Council
Date of Meeting:	July 29, 2004
Time of Meeting:	6:30 p.m.
Place of Meeting:	City Hall Council Chambers, 455 E. Calaveras Blvd.

ROLL CALL

Mayor Esteves called to order the Special meeting of the Milpitas City Council at 6:31 p.m. Present were Mayor Esteves, Vice Mayor Dixon, and Councilmembers Gomez, Livengood, and Polanski.

PLEDGE

Mayor Esteves led the Council and audience in the Pledge of Allegiance.

CITIZENS FORUM

Mayor Esteves invited members of the audience to address the Council on any subject not on the agenda, requesting that remarks be limited to two minutes or less.

Rob Means, Milpitas, said the Council would be talking about the Ethics Code and how it might influence the elections this year but at the same time there was an opportunity to look at a couple of other systems for cleaning up politics; commented that the states of Maine and Arizona have public financing of their campaigns; and commented that San Francisco is experimenting with the instant run-off voter method where voters rank the candidates, and suggested keeping an eye on it to see what happens in their campaigns.

Isaac Hughes, Milpitas, said he wanted to let everyone know the purpose or reason why he carries a camera around town is because of the things City employees and staff have done to him that he didn't think was right; people tend to be nicer to him when he carries a camera and he thought if it takes a camera that doesn't cause any harm, then that's fine; this is a public building and all of you are public people and you serve the public, that includes the staff and everybody at City Hall; said he had a federal and state Constitutional rights to aggrieve his government, which begins with accessing information; said he was a publisher of a new newspaper, he had already sold copies, and this camera afforded him the opportunity and other devices he uses to make recordings that are legal; he didn't want to hear any employees telling him he couldn't video tape them in the lobby or anywhere else in the building; they violate his Constitutional rights when they say that and when they act in ways they don't treat him with dignity. Mr. Hughes further commented that Darryl Wong has made many presentations as a paid employee of the City, the new ordinance says he can't, and even after you adopted that he made another BFI presentation for the benefit of a contractor making money and he can't do that under the Ethics Code and you need to stop people from doing that.

AGENDA

MOTION to approve the agenda as submitted.

M/S: Livengood, Gomez.

Ayes: 5

**PROPOSED INITIATIVE
MEASURE
HILLSIDE LAND USE
REGULATIONS**

City Manager Thomas Wilson reported that this item concerned the consideration of placing an initiative measure on the November 2, 2004, ballot; Mr. Bakker, the City Attorney, could address any of the legal issues, and it was a matter the Council requested be brought forward for Council review.

Assistant City Attorney John Bakker reported in August 1992, the Council adopted the current Hillside Ordinance following an extensive process of citizen input; the proposed ballot measure on the agenda would have the voters decide whether voter approval would be required before any amendment to the current Hillside Ordinance becomes effective; at the July 6th meeting, the proposed ballot measure was presented to the City Council and the item was continued to tonight's meeting for further public input; at that time, the staff was directed to notice the meeting in the Milpitas Post and it was published twice; since the July 6 meeting, staff reviewed the proposed ballot measure and revised it to further implement the goal of requiring voter approval of any changes to land use regulations affecting the hillside area; the

additional revisions proposed by staff provided that any changes to land designated hillside in the General Plan to a land use other than hillside would take effect only after voter approval; the effect of the staff proposed revision to the ballot measure was to require voter approval of any revisions to the boundary of the land subject to the Hillside Ordinance; if approved by a majority of the voters, this measure would require voter approval or ratification following any City Council action to amend the Hillside Ordinance or to change the General Plan land use designation of any property presently designated as hillside to a land use designation other than hillside; the termination date of this measure was December 31, 2018, which was also the termination date of the voter approved Urban Growth Boundary initiative; as indicated in the staff report, the action of the Council was exempt from CEQA as the measure did not modify in any manner the current Hillside Ordinance or the lands currently designated as hillside in the General Plan; there was no possibility of an environmental impact because enactment of the ballot measure would maintain the status quo; consistent with the direction at the July 6, 2004, meeting, if the Council elects to place the measure on the ballot, the resolution placing the measure on the ballot would direct the City Attorney to prepare and submit an impartial analysis and would appoint Vice Mayor Dixon and Councilmember Polanski to prepare the ballot argument in favor of the measure and the rebuttal argument, if necessary; and included in the Council's packet was a draft of the City Attorney's impartial analysis.

Councilmember Livengood asked what prompted the additional changes added by staff, the Council had an issue before them 25 days ago, the Council said it wanted to have a public hearing about what had been submitted, and since that time, it was altered and he was trying to understand why. Mr. Bakker explained that staff went back and looked at the proposed ballot measure more carefully and was concerned that effectively the regulations in the hillside could be altered by taking lands currently subject to the Hillside Ordinance and making them not subject to the Hillside Ordinance by simply amending the General Plan or amending the zoning that applied to the property such as the Hillside Ordinance would no longer apply. Mr. Bakker said it was staff's discovery that there was a potential area of confusion that was created by locking in the ordinance but not locking in the boundaries of the hillside area.

Mayor Esteves said it looked pretty straight forward to him, it was the status quo, some people were thinking that the Council was changing something on the ordinance but you have heard clearly tonight that nothing was being changed; it was the status quo, which was why an environmental impact study wasn't needed; it was just a matter of deciding whether we would want just the Council to be able to do revisions to the ordinance or would we want the people to have a hand if there were modifications to the ordinance. Mayor Esteves said that was his simple interpretation of this ordinance.

Mayor Esteves opened the hearing and invited public comments, requesting that comments be limited to two minutes or less.

Bob Cracolice said he owned 17 acres of hillside land in Milpitas and he needed more than two minutes and said he was curious as to why a ballot measure was needed. Mayor Esteves interrupted Mr. Cracolice and asked the City Council if they would like to allow more than two minutes. Mr. Cracolice said he would try to stay within the two minutes but didn't want to be shut down if it was three. Mayor Esteves said he had to be fair to everybody so the Council needed to set the rules. Councilmember Gomez said he had no problem with extending it to three minutes.

MOTION to extend the time limit for speaking to three minutes.

M/S: Gomez, Dixon.

Ayes: 5

Mr. Cracolice continued by stating that it was very kind on a major issue to limit the speakers at all when there were six people in the room that might take an hour on such an important issue; the Council was now making a major decision on who controls the hillsides at all for any major or minor changes; for whatever reason, this body is wanting to, or considering

putting a ballot measure out that would restrict your ability to determine how the hillside goes for 14 years; he wanted to know why was the Council not capable of managing and handling this as the Council had in the past; there were people who were strong environmentalists out there who can bring together a vote that could shut down the hillside people who would prefer to have an opportunity to come to the Council and state their case if they wanted to do some modest things in the hillside; he saw one thing – it was political and he resented that; he thought there was an opportunity here that the face of this body would change and that body leaving was pushing this issue; he happened to own land in the hillside and needed to know if the Council was going to make any changes on the current Hillside Ordinance; he also needed to know if he had something he wanted to bring forward that was reasonable and fair, he couldn't have that unless it came from a vote of the community who doesn't really care about him and would vote against him in a second because they like to see open hillsides; he had always believed that this body had wanted to have everything their way on the hillside and have had that and have not cooperated even to a degree of someone like his family who are environmentalists that preferred to have moderate controlled growth in the hillside, not one home per acre; now you're telling us I've lost my right to approach you to ask you to approve something in the not-to-distant future and you're telling me I have to go out to the many people of the City of Milpitas and get them to support my issue when you just sit there and whatever you do to listen to what's going on; those were his points and he wanted solid answers on those; said he pays a modest tax on his 17 acres so that was not an issue, and he couldn't claim taxation without representation, which would be foolish, but in just the fairness of it all, this was a political issue and asked to be told that it wasn't because he was very disappointed in what the Council was trying to do; but he was disappointed in the past so it made no difference. Mr. Cracolice asked what happened after this, the Council makes a decision tonight to put it on the ballot? Mayor Esteves responded it would depend on the City Council.

Isaac Hughes said he disagreed with limiting speakers' time and quoted the Attorney General as saying it is not unreasonable for the public to address anybody and aggrieve their government at least five minutes in length of time and he wanted all the people to know that; said go to the Internet, Myers Nave specialized as California's largest law firm specializing in eminent domain; on page 20 and 21 of the \$200 million bond book, Spring Valley Bible Church on Main Street, and other churches on Main Street and the private school, were listed as public land; to secure a \$200 million bond in New York across state lines, the City of Milpitas Agency went and secured a loan and they called private land (these churches) public land; then they went and got the County Assessor to assess property highly in the development zone so they could value the land higher to cover the debt that they left from a \$100 million bond that remained at \$71 million; the first \$71 million of a \$200 million bond went to that; the second check cut went to pay for land across from the jail that no one wanted to buy from the County for several years and they turned around and cut a deal by buying it from the County; this was a bunch of crap; the bottom line was that you have the time to speak and he couldn't understand a word the Mayor said and nobody else in public land out there could either.

Paul Hay said he applauded the Council this evening for giving the citizens of Milpitas, if you do vote to do that, the opportunity to make any final decisions on changes to the Hillside Ordinance; two years ago when he was walking the neighborhoods in his campaign for City Council, he heard from many citizens that development in the hillsides was still a major concern; many people he talked to were under the mistaken belief that the Urban Growth Boundary and the Hillside Ordinance were the same thing; moreover, there was considerable concern and displeasure when they learned that the Hillside Ordinance could be changed by only three Councilmembers, which could allow virtually unlimited development within the Urban Growth Boundary; the Council's action tonight would give Milpitas voters the opportunity to correct that oversight; letting the voters decide was a wise decision.

A man who said he lived on Evans Road and was a hillside property owner advised the City to reject this resolution.

Richard Ruth said that on July 6th, it was called to the Council's attention that there had been no public hearing or notice that this initiative was to be discussed; that evening the Council agreed to set the initiative aside until July 29th; he now noticed that the initiative on the public hearing tonight was a different initiative than the one presented July 6th; it had been revised and included changes to the General Plan, which nobody knew anything about, and the public again had been denied the opportunity to adequately review the revised initiative and its impact. Mr. Ruth thought this was an unconscionable action by the Council, and it reflected the back room antics that had been preeminent in presenting this initiative to the public. Mr. Ruth further stated if this initiative passed, it would present the property owner with a vastly different and expensive process; the property owner would have to gather at huge costs thousands of signatures to qualify a ballot question for approval by the general vote. Mr. Ruth said the voters were characterized by a Councilperson in the July 22 Milpitas Post as not understanding or knowing what it is; this enlightened and sophisticated population was being designated by the City Council to direct the growth of Milpitas. Mr. Ruth asked do you really think the voting public is equipped to make an objective reasoned decision and how can the property owner have any hope that they could get a fair hearing for requested changes; and he knew of no other Milpitas ordinance that had this as a requirement and placing the burden on the citizens to effect change. Mr. Ruth said he had to edit his comments since he only had three minutes and commented that the City Council and its staff were the source of intelligence and arbiters of policy and should have the responsibility to review any changes to the Hillside Ordinance, not the general voting public. Mr. Ruth quoted the same Councilperson as saying the ballot initiative, if approved, would allow Milpitas voters to have final say on whether provisions of the Hillside Ordinance would be changed – not a majority of the City Council. Mr. Ruth said it was the leadership role of the City Council to judge the soundness of any issue brought before them; it was, and should be, the Council's responsibility; by leaving it in the hands of the voter, the Council was abdicating its leadership role in directing the City's growth. Mr. Ruth stated that he saw this initiative as being a detriment to the City and his vision of what Milpitas should be and urged the Council to vote no on approving this initiative.

Frank Houghton said he was building a house on Country Club Lane and disagreed with Mr. Hay that people of Milpitas were concerned about the hillside and the blight; he thought the people who were building houses in the hillsides were building beautiful houses and there may be a house or maybe two houses a year and he couldn't call that a blight. Mr. Houghton further stated he thought this ordinance was totally unnecessary; at present, the City has on the books several ordinances that were of a rather punitive nature concerning the building of houses in the hillsides; one was that you can't build any portion of a house within a hundred feet of the crest line; another was that a house could not be taller than 17 ft. at the peak; this required people to make extraordinary roofing decisions; some people have gone with flat roofs because it was the only thing they could fit in and a flat roof wasn't a good engineering decision; there were already plenty of ordinances on the books for the City of Milpitas to control any blight you might have within the hills of Milpitas, so he didn't believe another ordinance was needed. Mr. Houghton said he thought another ordinance would just require more cost to the taxpayers; as mentioned, there would be a requirement for a lot of signatures to get the ordinance on the books but there would also be a requirement in the City Building and Planning Departments to monitor this ordinance and asked why and how do the taxpayers of Milpitas benefit from this ordinance; all they would gain was more cost of government; there was very little benefit to anyone who pays taxes and supports this Council and the other form of government required in Milpitas.

Jerry Epps said he came to thank the Council for giving the residents of Milpitas the opportunity to decide how their community looks; hopefully, they will decide that it should not look like the ridgelines in Fremont, which Milpitas has the benefit of viewing; he agreed with Mr. Hay that this be promoted and moved forward; he thought the citizens of Milpitas were more inclined to do the good thing for the citizens of Milpitas rather than one vote on the City Council, which may or may not change in the fall; he did think that the people who were

most interested in seeing that the City Council can control things were people who have a real estate interest and there were many hundreds of millions of dollars that were available to real estate developers and real estate sales people available right in the hills up there; and he would like to see the Council move this project forward so the people of Milpitas can decide this, not one or two Council people.

Maria Lemery said she didn't have a whole lot to add beyond what Mr. Hay said but she did support a ballot measure; she knew how much blood, sweat, and tears went into getting the Hillside Ordinance in place and she knew that the Hillside Ordinance was very vulnerable because like Mr. Hay said, all it takes is three votes of a future City Council that perhaps would be pro-growth, pro-building on the hillsides and all it would take was three votes to dismantle what so many people worked so hard to put into place. Ms. Lemery further stated the ordinance had worked beautifully for the last 12 years to prevent the kind of building blight seen to the north; but if it was dismantled, we might see that. Ms. Lemery commented that like Mr. Hay said, she believed that there were a lot of people who were confused about the ordinance and how it differs from the Urban Growth Boundary; they see it as one and the same; they don't understand that all the Urban Growth Boundary did was prevent further annexation of county lands into the City. Ms. Lemery said, hopefully, this would clarify it for the people, she thought it was a good thing to put it in the hands of the voters but had a question if the ballot measure would be specific or would it be general; would it be across the board - would voter approval be required for a simple variance? Ms. Lemery encouraged the Council to go forward with this.

Rob Means questioned if it was within the rules now to build windmills, wind generators on the hills or was that forbidden by the current rules? Mr. Means said if we really are at the peak of world oil production, energy will continue to get more expensive but would it get expensive enough fast enough so that the people of Milpitas want to sacrifice the views up there for energy; he really didn't know. Mr. Means further stated he thought the idea of making this require a vote of the public was quite political and questioned if it was reasonable; was this an important enough issue to lock into concrete for the next 12-14 years; generally speaking he didn't approve of making essentially permanent decisions but the hillside issue was part of the whole global picture of what we're trying to accomplish in the Bay Area of having quality of life; and the Greenbelt Alliance and the whole idea of having Greenbelt is key to that kind of a lifestyle that we've enjoyed here; and to lock it in for the next 12-14 years against the caprices of a City Council that's elected and under the current rules where we have winner take all, where we have dirty politics, where we have campaign consultants that play these games, where it takes money to get into the race and run a decent campaign; under this set of rules, he didn't trust the Council either so let's go ahead and lock it in.

Tom Sahnes said he wanted to draw to the Council's attention that the people on Wellington Drive have very good firsthand information about how well the ordinance works well right now; there was a field across the street from their homes that was a weed field; it now has three lovely homes, has raised property values, and the whole process worked perfectly; they were able to eliminate someone coming in and building six two-story homes in place of three very nice one-story homes that meet all of the Hillside Ordinance requirements; he believed that the current plan works; it should be left in place; he also had a concern that the people don't understand what this ordinance is really about and there were a lot of people in the Hillside Ordinance zone that were very concerned about how they would replace their home in case it was destroyed by fire; what would they have to do to get back to the same position that they were in; would he have trouble building a hobby shop in his back yard; if he wanted to modify his fence, would he have to get the voters to approve it, which seemed to be unreasonable, and he thought there needed to be a clear definition of what would be required for the City to vote and he didn't think the City needed to vote on this; this was why the Council was elected and that was where our voice comes in; we don't need to do it a second time.

Brian Raisch said his family owns property on Old Calaveras Blvd and they felt there really hadn't been a need shown for this ordinance as the Council, with staff support, certainly should be able to analyze and vote on any proposals that come before them that may involve an amendment or a modification of the Hillside Ordinance; he thought the property owners coming before the Council should be able to rely on that and have a body that can study the issue and have some background and experience to decide on their proposals as opposed to having to run a political campaign to put it to a vote; other than that, he wanted to be on the record that his family didn't think this was necessary and the Council shouldn't approve it.

Theodore Weller said he was quite disappointed in the City in that the previous meeting of July 6, 2004, nobody within 300 feet of the City or where this was going to take place, was notified by mail, which was a normal procedure if something is going to be done; acknowledged that the Council did put a notice in the Milpitas Post that there was going to be a meeting but there was nothing along with it that anybody would really understand what was going on and it showed very well with about 15 people showing up for this meeting. Mr. Weller further stated he didn't like the idea of the ordinance, he never really had because the hillside owners, the ones that were actually in the county, don't have any say as to what happens to their property; if you've got a Urban Growth Boundary and are within that sphere of influence, we can't do anything with our land; he didn't think that was a fair way to deal; he was of an old family here and they respect the land and didn't want to see it destroyed; they were still trying to preserve it and they will as long as they can, but he did not like somebody coming along and saying in an election year let's put a ballot measure on that will help us in the election; his feeling was that this should be delayed and if you're looking at 2018, there was plenty of time to put this thing together; but now that he heard tonight that there had been modifications to it, he said this should be dropped and put off until after the first of the year; then really take a good, hard look at what these hills are, they're going fast, there were a lot of places that couldn't be built on, and most people would oblige and work with that but don't hamstring the people who live in the county on the hillsides and restrict them from at least being able to do something with their land.

A man who said he was a San Jose resident and was in the process of building a house and was opposed to this agenda just because of the amount of red tape and the involvement of the City Council; he had been in the process of building his house for five years and just the amount of time and effort involved in getting a house built, he was strongly against this agenda.

Brian Adame said he was the son of hillside property owners; they bought the property in 1981 when he was a little kid and he had memories of driving from Santa Clara to Milpitas up and down 237 when there were no buildings; there has been a lot of building in the South Bay; he saw the development in Fremont and in the San Jose area but he still didn't see development in Milpitas; but to take away the property owners' rights and give it to the whole city to vote on what the property owners would like to do seemed like taking away the property rights; there had been development in Milpitas but the hills in Milpitas still looked undeveloped, which was nice, but taking it out of the property owners hands was not fair to them and putting it in the hands of the whole city; he doubted the whole city drives up there, takes a look and says we don't like the way it's going to develop later; he thought they look at it from a distance but didn't think that they really consider it as future development; they just like the way it looks now; and if you trust the property owners now, he thought they would keep it the way that they have been for the past 20 years that he has been driving over there, and so he was against the measure for any future lock down on the development because he still trusted the property owners and it still looks nice.

Mayor Esteves asked if there were any more comments from the audience. There were none. The Mayor asked for comments from the Council.

Councilmember Gomez said he was a no vote on this; he was uncomfortable with two issues; one, he didn't like the timing of it and doing it in an election year gave him an eerie feeling on

it; two, he didn't think the hillside property owners were being given a fair shake, commenting that when the Council went through the whole mayoral term issue, it went through a commission, it was discussed at a couple of Council meetings, the Council looked at all the ramifications, the Council discussed it and tried to be fair and eventually gave up on it and here he didn't think the Council was giving these guys their fair shake. Councilmember Gomez said if the Council were to do that, it would form a committee, send it to the Planning Commission at least, and none of that was being done, he was a little uncomfortable holding this public hearing in July when everybody was on vacation, and he was a no vote.

Councilmember Polanski said she would like to try to answer some of the questions; she thought sometimes everything the Council does was political; one of the questions was does this change anything in the Hillside Ordinance – by putting it to a vote of the people, it would change nothing; it leaves (as one speaker said) the ordinance as it has been for the last 12 years; someone brought up backroom antics – that didn't occur; this was something that was brought up when she started walking two years ago for a seat on the Council and many people asked her why was there some building going on in the hillsides when a UGB had been passed and she had to explain the difference between an Urban Growth Boundary and a Hillside Ordinance; she still had people ask her how can they be building when we have a Hillside Ordinance; she thought someone else mentioned that you might trust the Council you have now, you may not, but it really only takes three votes and that was one of the arguments for the UGB when it passed; she sat through almost all of the community meetings for the Hillside Ordinance and she saw the agreements and the disagreements between the environmentalists and the property owners and the hillside property owners and thought they came up with a fair ordinance; she felt strongly about the ordinance when it was passed by the Council and felt strongly about the UGB; if the Council becomes pro-growth and they start building on the hillsides, they change the ordinance and the City has to take care of the infrastructure, provide police and fire services, we know there are earthquake faults up there, and the taxpayers of Milpitas will have to foot the bill; and she said let the voters decide, this would change absolutely nothing, it would insure that the Hillside Ordinance doesn't change for as long as the UGB was in effect.

Vice Mayor Dixon said to answer Mr. Sahnes' question if your home burns down, you are allowed to rebuild what you had before; great lengths were put into place to protect those who currently live within the hillsides; that was why so much time and effort was put into the height of buildings because there was a desire at that time to build very large homes, which you could currently see on Piedmont Road at Calaveras, and that could have happened across the street from Mr. Sahnes; because that was a very controversial piece of property, if she remembered correctly. Vice Mayor Dixon further stated she didn't know about windmills but did recall that energy conservation was covered and that you are at least allowed to have solar panels but windmills, she would have to go back and look at the minor details. Vice Mayor Dixon, in response to Ms. Lemery's question about minor changes, that would still be a part of the normal process; what was being looked at tonight was the major changes to the ordinance in terms of density and large developments; people are still allowed to develop their property, they just want to develop more with what they have. Vice Mayor Dixon, commenting on the UGB arguments, said it clearly stated that it takes only three votes and to her, that was dangerous; yes, the Council was up here to make decisions and this was one of those decisions; in the last two years there had been a lot of discussion with residents; they are confused with the Urban Growth Boundary; many are still confused by the campaign tactics that happened with the No on Z; this will set clarification into place if the voters approve it; and there was nothing that said the voters were going to approve it. Vice Mayor Dixon pointed out that the City of Saratoga has this on their books forever; this wasn't forever; this came about, and she credited Councilmember Gomez for months ago putting into with great momentum the issue of sort of like cleaning house, and this was a part of cleaning house, and discussion had been going on for quite awhile; the Council would be discussing later in the meeting ethics in the City, we've seen a deterioration in politics across the land, unfortunately, it had happened in Milpitas, which was disappointing; a lot of hard work went into this, and her personal philosophy was this community was not what it was in 1992, was not what it was

in 1998, and certainly by 2018 it will be an entirely different community; when the UGB comes to its sunset, timing it co-terminus with the Hillside Ordinance, she had faith in the community that at that time they will decide what they want for their community and the surrounding lands in their community; if that's what the community wants at that time, if we have a thriving downtown in the Midtown area, in 2018 the City may be willing to invest money in infrastructure to take care of the problems that currently exist in a lot of areas within the hillsides; and if they want to develop at that time, she trusted the public; and she would never apologize for entrusting the public to make the right decision and she had the utmost faith in the voting public.

Councilmember Livengood commented that the ordinance itself, going back to the creation of it 12 years ago, if there was something he didn't like, he had 12 years to make revisions to the ordinance; he liked the ordinance, it was a sound ordinance; and if he had wanted to make changes, he would have proposed it long ago so he thought just the fact that we've stayed with it and worked with it and supported it was a good indication, at least from his perspective. Councilmember Livengood further stated the issue for him wasn't whether the ordinance was appropriate or whether the voters should have an opportunity to vote on it, but was the process gone through that caused him heartburn; the proposal that was made 24 days ago had been changed; it was not the same as it was 24 or 25 days ago and he didn't think that was right; he thought if you present to the public this is what we're going to be talking about, that's what you should talk about and there was a big difference between the ordinance itself and putting that on the ballot for approval by the voters and the additional issue brought forward by the City Attorney, which was the issue of rezoning and they were two very different things; his position was that he didn't have a problem with the voters having a say on this issue; he supported the Urban Growth Boundary but as a Council, it wasn't always what we do but how we do it and he would prefer a much more deliberative process, one that would include more time for landowners to speak, for folks who are not landowners to speak, for all of them to speak on the impact of this decision; he thought for his liking, it was too much too fast; what he would rather see was a step back and enter into a process with a much more inclusive and comprehensive look at this issue and include more people and give more notice so that folks could come back and talk about it. Councilmember Livengood said one of the things that scared him tonight was the City Attorney's statement that staff looked at it and saw some problems with it; that told him that maybe not enough deliberation went into putting this together and making it ready for the voters to vote on; he believed the voters would do the right thing but it should be done in such a way that even people who disagree walk away from the process feeling like their opinions were heard and they were given an opportunity to speak and they were given their fair shake; and because this was such a short fuse between 25 days ago and tonight, he didn't have that feeling that we've gone far enough in providing input and opportunity for everybody to speak so without saying anything about the issue whether it should be voted on by the people or whether the ordinance itself needs revision, just the process was enough for him tonight to say no, and he needed more time to step back and take another look.

Mayor Esteves said the hillside has always been a major issue for everybody and as he heard tonight, it was an ordinance that has also been working very nicely for the last 12 years; the Council was not approving a new ordinance tonight or deciding an ordinance; what was being done tonight was just to place an initiative measure instituting a voter approval requirement for any amendments to the Hillside Ordinance. Mayor Esteves further stated that meant that if residents are interested, they will participate and vote yes or no; if they don't care about participating or keeping this ordinance, they will easily vote no; at the same time in terms of knowing what it is, that was why we have three months to discuss it because the election was not tomorrow – it was November 2; it could fully be discussed objectively by both sides and as Councilmember Livengood said, we always have trust in our voters and the voters should have the say. Mayor Esteves said he wasn't concerned about putting this on the ballot because it was just being placed in the hands of the people, and everybody will have the time over the next three months to speak to everybody on what is the impact, so that was why he felt very comfortable; since it was a very critical issue for all of us, it should go to the ballot and let the

people decide, not just the Council. Mayor Esteves further stated whether it's the process or whether it's anything else for him was irrelevant because it will be discussed fully during election time and the election was not tomorrow, it was November 2.

Vice Mayor Dixon said she wanted to address Councilmember Livengood's concern about this being changed from 25 days ago and maybe Mr. Bakker could clarify it more because she received a call from Steve Mattas who pointed out that what we're currently doing with other land use issues, we're making everything consistent with the General Plan and he said that you had discussed this issue and this was to make it consistent with other land use issues because it really hasn't been changed.

Mr. Bakker responded that was essentially correct; the General Plan contains land use designations for hillside and effectively incorporates the requirements of the Hillside Ordinance and the change was simply designed to implement the intent of the ballot measure, which was to lock in the hillside regulations; by locking in the location of the Hillside Ordinance, we thought that was the intent and that was the reason for the proposed change.

MOTION to punt this out for some time and form a committee comprised of hillside owners as well as people from the general city and get a recommendation from them as well as the Planning Commission on this issue.

M/S: Gomez, Livengood.

Councilmember Gomez restated the motion to delay this until a later date, form a committee comprised of hillside property owners as well as people from the valley floor, get a recommendation from them as well as get a recommendation from the Planning Commission on the issue.

Councilmember Polanski asked Councilmember Gomez what exactly would he be looking for in a recommendation. Councilmember Gomez said a number of people said they wanted to discuss ramifications on the issue, and he thought let them discuss whatever they feel the ramifications are of doing this.

VOTE ON MOTION: Ayes: 2 (Gomez, Livengood) Noes: 3

MOTION to approve Resolution No. 7459 placing the initiative measure instituting a voter approval requirement for any amendments to the existing Hillside Ordinance (Ordinance No. 38.672) on the November 2, 2004, ballot and direct the City Attorney to prepare the Impartial Analysis.

M//S: Dixon, Polanski. Ayes: 3 Noes: 2 (Gomez, Livengood)

RECESS

Mayor Esteves recessed the meeting at 7:40 p.m. The City Council meeting reconvened at 7:54 p.m.

ETHICS PROGRAM FOSTERING PUBLIC TRUST

City Manager Wilson explained that this was an opportunity for the Council to participate in an interactive workshop environment with Dr. Thomas Shanks, Associate Professor of Communication, Santa Clara University.

Dr. Shanks explained this would be an interactive workshop centered on where you want to take the City and this meeting tonight would center on the following goals:

1. Share personal core values;
2. Discuss goals for ethical leadership;
3. identify the major stumbling blocks
4. Practice constructive feedback;
5. Translate values and goals into practical everyday behaviors; and

6. Identify one practical next step.

The Council left the dais and continued the workshop at tables placed in front of the dais.

ADJOURNMENT

Mayor Esteves adjourned the Council meeting/workshop at 10:15 p.m.

Gail Blalock
City Clerk

**The foregoing minutes were approved by the City Council as submitted on
September 7, 2004.**

Gail Blalock, City Clerk

Date

APPROVED MINUTES
CITY OF MILPITAS

Minutes:	Regular Meeting of Milpitas City Council (Including Joint Meeting with Redevelopment Agency)
Date of Meeting:	July 6, 2004
Time of Meeting:	7:00 p.m. (Regular Session) (No Closed Session)
Place of Meeting:	City Hall Council Chambers, 455 E. Calaveras Blvd.

ROLL CALL

Mayor Esteves called to order the regular meeting of the Milpitas City Council at 7:00 p.m., announcing that there had been no Closed Session. Present were Mayor Esteves, Vice Mayor Dixon, and Councilmembers Livengood and Polanski. Councilmember Gomez was absent.

**CLOSED SESSION
ANNOUNCEMENTS**

None.

PLEDGE

Members of Troop No. 92 led the Council and audience in the Pledge of Allegiance.

MINUTES

MOTION to approve the City Council minutes of June 10, 2004, June 15, 2004, and June 16, 2004, including joint meeting with the Redevelopment Agency, as submitted.

M/S: Livengood, Polanski. Ayes: 4 Absent: 1 (Gomez)

SCHEDULE

Councilmember Polanski reported the July 8, 2004, Santa Clara Valley Transportation Authority Policy Advisory Committee meeting had been cancelled; she also believed the July 14, 2004, Planning Commission meeting had been cancelled.

Vice Mayor Dixon announced there would be a meeting of the Santa Clara County Emergency Preparedness Council on Thursday, July 8, 2004.

Councilmember Livengood reported the TPAC meeting scheduled for July 8, 2004, had been cancelled due to the fact that the San Jose representative was on vacation for the month of July and there would not be a quorum.

MOTION to approve the Schedule of Meetings as amended.

M/S: Polanski, Livengood. Ayes: 4 Absent: 1 (Gomez)

PRESENTATIONS

Mayor Esteves presented Certificates of Reappointment to Diane Davis, Marilyn Hay, Margie Stephens, and Trini Aoalin, all members of the Library Advisory Commission.

Mayor Esteves presented a Commendation for the Girls for a Change Leadership Scholarship Travel Award to Jasmyne Jamerson, who had not been able to attend the meeting when the presentations were awarded.

Mayor Esteves read a proclamation proclaiming July 2004 as "Parks and Recreation Month" and presented it to Recreation Director Bonnie Greiner.

Mayor Esteves explained that the City was supposed to receive its Sister City from Japan this evening; unfortunately, the Mayor was not feeling well, and the delegation left earlier today; the delegation was at City Hall Monday night and had a chance to exchange ideas. Mayor Esteves stated it had been planned to present the Mayor of Tsukuba, Japan a proclamation describing the relationship between Tsukuba and Milpitas; however, as he was not able to attend these evening's meeting, Mayor Esteves read the proclamation proclaiming that Milpitas and Tsukuba had a Sister City Relationship through a Memorandum of Understanding covering the period of January 30, 2004 – December 31, 2008, and presented it to the Chair of the Sister Cities Commission, Debra Garcia. Ms. Garcia stated it had been

her pleasure to escort the Tsukuba delegation around Milpitas; the City Hall tour was thoroughly enjoyed, and the Mayor had asked that she express his gratitude to Mayor Esteves for the tour and sent his apologies for not being physically able to attend this evening's meeting. Ms. Garcia passed out gifts left for the Council from the Tsukuba delegation. Ms. Garcia stated that in June, she, five middle school children, and three other Milpitas citizens visited Tsukuba; were treated to wonderful tours; received a warm welcome when they arrived; the five middle school children in August would be hosting the children they stayed with while in Tsukuba; while in Tsukuba, the city of Tsukuba presented her with an owl to present to the City of Milpitas, explaining the owl was Tsukuba's symbol; also the city of Tsukuba wished to present a vase created by a local artist in Tsukuba.

Mayor Esteves thanked the city of Tsukuba and its Mayor for having a great sister city relationship, and stated the gifts would be displayed in the City Hall lobby.

Mayor Esteves read a proclamation proclaiming July 6, 2004, "Neil MacKenzie Community Service Day" in recognition of Mr. MacKenzie's exemplary service, outstanding community spirit, and many contributions to the community. Mr. MacKenzie was unable to attend; however, the audience gave Mr. MacKenzie a resounding standing ovation.

Rob Means read a poem written by Neil MacKenzie regarding the strength and value of joining hands and volunteering. Many of Neil MacKenzie's friends gave testimony of what Mr. MacKenzie did for them and their view of life.

A Santa Clara County Board of Supervisors representative for Pete McHugh presented a Proclamation/Resolution of Commendation from the Board of Supervisors thanking Mr. MacKenzie for all his community service, a lifetime of service, and for his friendship.

Gaye Morando, representing the Milpitas Chamber of Commerce, the Board of Directors, and its staff, stated they recognized all of Mr. MacKenzie's diligent efforts; prayers were with him; and presented a Certificate from the Chamber of Commerce.

Don Ryan, President of the Milpitas Lion's Club, stated the Club was presenting the President's Award Certificate of Appreciation, recognizing Neil MacKenzie's community service contributions

Mayor Esteves said staff would see that Mr. MacKenzie received all the Commendations and Certificates.

Santa Clara Valley Water District Director Richard Santos provided the Council with an update on the many projects and various activities the Santa Clara Valley Water District was involved in within the City of Milpitas; reported in 2003, there was a collaborative action plan and agreement between the City of San Jose and the Santa Clara Valley Water District committed to development and operation of Joint Trails Projects; and said he would like to see the Santa Clara Valley Water District and Milpitas have a joint agreement and was hoping the Council could sit down with the Santa Clara Valley Water District at a luncheon (date to be determined) and work something out.

CITIZENS FORUM

Mayor Esteves invited members of the audience to address the Council on any subject not on the agenda, requesting that remarks, including any visual or technology-assisted presentations of any kind, be limited to two minutes or less, and noted that the City Clerk would be using the timer and when the red light at the podium came on, two minutes would be up.

Three students from the Sunnyhills Neighborhood Association said that on July 10, 2004, the Association would be holding a "Become an Artist Day," to be held at the Sunnyhills Methodist Church; their Association had been given a grant by the Silicon Valley to fund raise for this event; explained what events would be offered; and invited everyone to attend.

Ed Connor commented on the West Niles Virus; stated Vector Control would be handing out brochures and placing information out on television; and he personally advised everyone to take Vitamin B1 to keep the mosquitoes away.

Ann Zeise requested the City consider in the renewal of the cable television contract getting a CODEC to allow Macintosh computer users to view the City Hall televised meetings. Ms. Zeise commented that she had satellite television and the only way to watch the Council meeting was on the computer.

Rob Means said he had the opportunity to see Fahrenheit 911; to get unbiased, clear information or even real news, it has to be searched out and usually you have to pay for it; this was an example of where you can pay and get news of what's going on in the country; encouraged people to spend a few dollars on some of the information being made available through films and books, and learn a little bit more about what's going on in the country.

Art Swanson addressed the odometer and explained that in the action of the odometer, Place Value could be found, gradually expanding to the child; it is a hands on instrument; and stated that Place Value had not been directly addressed in past history.

Isaac Hughes stated he got a lot of questions as to why he carried a tape recorder and a camera with him, and he wished to place the following on the record that the City Attorney's office has continually vexed, annoyed, and harassed him; the Police Department under the guidance of the Chief of Police had vexed, annoyed, and harassed him; the Mayor's office had vexed, annoyed, and harassed him, as well as the Council; various staff members had vexed, annoyed, and harassed him; Mr. Mattas had lied to him; Mr. Bakker had lied to him; the Chief Information Office had lied to him; he had various members of the Council lie to him; had Gail Blalock lie to him, specifically, he had a video tape of Ms. Blalock telling him that he had to put all his public requests in writing; and there were other people in the audience that he had promised he wouldn't say those things about them only because he thought they didn't understand what they were doing at the time. Mr. Hughes stated specifically, on page 21 of the \$200 million bond, there was a discrepancy between pages 20 and 21, it states there is 10% vacancy of the 691.3 acres of Mid-Town Plan; when in fact, it only shows there's 14; and Mr. Wilson refuses to tell him why it is that they list churches, private schools, and post office as public land when the church that they're speaking of was owned by a personal friend of his and asked for an answer."

ANNOUNCEMENTS

City Manager Thomas Wilson announced that Chief Building Official Edgar Rodriguez would retire before the next Council meeting, and he wanted to take the opportunity to recognize Mr. Rodriguez for his 20 years of service and invited Mr. Rodriguez to make some comments.

Mr. Rodriguez expressed his deep appreciation to the Council for the 20 years of support he had received from the various members of the Council; appreciated the Council, from his point of view, had always done the best in the interest of the City; expressed appreciation also to the City Manager's office and the City Attorney's office; and wished the City of Milpitas the best.

Mayor Esteves stated he had always received good feedback from the community for services rendered back to them; and thanked Mr. Rodriguez for his years of service to the City.

Vice Mayor Dixon stated it was an honor and a privilege to have worked with him; he ran a very, very well managed department; and he would be missed not only by the Council and staff, but also by the community; and wished him and his family the best.

Councilmember Livengood, recalling that back in 1987, when he was Mayor of Milpitas, Mr. Rodriguez had invited him to speak at a Building Officials dinner; what he remembered most was that as he met many of Mr. Rodriguez' peers, he found they had an amazing amount of respect for Mr. Rodriguez, which encompassed his work, integrity, intelligence, and

understanding of what it meant to be CBO; and he had always received a straight answer to his questions; and wished him all the best.

Councilmember Polanski stated he had never heard anything but good things about Mr. Rodriguez and his department; she would miss having the opportunity to continue to work with him; and wished him much success and happiness.

Mr. Wilson informed everyone that Friday would be the celebration of Mr. Rodriguez' retirement at the Embassy Suites, at 6:00 p.m. and invited anyone who was able to attend to come by and show their appreciation.

Mayor Esteves said Mr. Rodriguez was a role model, set a good example, and thanked him for being a good example for everybody.

Vice Mayor Dixon announced she had attended the annual Chamber of Commerce Installation of Officers and the Business Person of the Year Banquet honoring Diane McDonough and it had been great fun; she had the opportunity, along with Mayor Esteves and Councilmember Polanski, to attend the installation of Ray Maglalang, an Economic Development Commissioner, as he was installed as the President of the Filipino-American Real Estate Association, which was one of the fastest growing associations of its kind, if not the only one of its kind in the United States. Vice Mayor Dixon, addressing the fact that parts of the community sometimes get overlooked due to financial constraints and other priorities, stated recently the City was able to invest in the Selwyn Park area and the park had recently been opened and dedicated; and thanked the employees who had attended and helped with the dedication. Vice Mayor Dixon further stated that she and Mayor Esteves had the opportunity to co-host the Light Rail opening at the Great Mall; encouraged everyone to give the Light Rail a try; and she had the opportunity at the Relay for Life to work the luminary table, knew it was a success because when the lights were turned off for the luminaries, people were still coming to the table in the dark to make a purchase and congratulated Lorraine Hepworth and her crew.

Vice Mayor Dixon, using a phrase epitomized by Neil MacKenzie, said "one person can make a difference," stating she remembered the degree of persistence Mr. MacKenzie always had, reflecting back several years ago when he got on the City's back because the City had dropped tenaciousness, the City now had Music in the Park.

Councilmember Polanski said she had the opportunity with Mayor Esteves to attend the unveiling of the Cartwheels sculpture in front of City Hall; described the sculpture and invited everyone to stop and see it; on July 23, 2004, at the Commissioners' Recognition Dinner there would be a special unveiling and plaque dedication because in lieu of the Commissioners receiving a gift this year, they helped pay for the sculpture; she also had the opportunity to attend the City's 4th of July celebration and thoroughly enjoyed the event; and mentioned that last Friday she met with John Coleman and Ray Panek of KB Homes regarding housing around the Elmwood area.

Mayor Esteves said the 4th of July event was grand and congratulated and thanked staff for its great planning; thanked St. John's Church for sponsoring the Health Fair; congratulated the Amateur Radio Club on the great field day in the Pines area; and congratulated the new Toastmasters Club in Milpitas on receiving the President's Award in its first year and for being a distinguished club in the City of Milpitas.

AGENDA

MOTION to approve the agenda as submitted.

M/S: Polanski, Livengood

Ayes: 4

Absent: 1 (Gomez)

CONSENT CALENDAR

Mayor Esteves inquired if anyone wished to make any changes to the Consent Calendar. Councilmember Livengood said he would be abstaining on item 37, the Senior Housing Project that KB Homes was involved with, noting that KB Homes had been a source of

income for him during the last 12 months. Councilmember Polanski requested items 13, 17, and 40 for discussion.

MOTION to approve the Consent Calendar, items with asterisks on the agenda, as amended by the removal of items 13, 17, and 40, in accordance with the staff recommendations.

M/S: Dixon, Polanski.

Ayes: 4

Absent: 1 (Gomez)

***6.**

Appointments

Approved the Mayor's appointments of the following:

1. Raymond Serena to the Alternate 2 position (term expiring June 2007) on the Parks, Recreation, and Cultural Resources Commission; and
2. Barbara Ebright to the Alternate 2 position (term expiring December 2005) on the Senior Advisory Commission.

***10.**

2004/2005 Transportation for Livable Communities (TLC)

Approved request to submit a grant application to the Metropolitan Transportation Commission for the 2004/2005 Transportation for Livable Communities (TLC) Grant.

***11.**

2000 Measure A Transit Program Priorities

Approved forwarding to the VTA PAC the following priorities:

1. Operating Assistance – 2006 through 2036
2. BART to Milpitas, San Jose and Santa Clara
3. Mineta San Jose International Airport APM Connector
4. Caltrain Upgrades and Improvements
5. ACE Upgrades

***16.**

Building Inspector Vacancy

Approved recruitment to fill one building inspector vacancy.

***18.**

City Owned Portable Stage

Approved request from South Bay Kids to waive the rental fee for use of the City's portable stage on August 21 and 22, 2004, for use at the 2004 Art & Wine Summer Festival.

***19.**

Northern California Grantmakers Grant Award

Approved the appropriation of the \$540 grant received from the Northern California Grantmakers to be added to the Fiscal Year 2004-05 budget for function 171 – Aquatics, and authorized staff to use the funds accordingly.

***20.**

Northern California Grantmakers Grant Award

Approved the appropriation of the \$760 grant received from the Northern California Grantmakers to be added to the Fiscal Year 2004-05 budget for Function 164 – Camp Stay & Play, and authorized staff to use the funds accordingly, subject to approval as to form by the City Attorney.

***23.**

Lot Line Adjustment

Adopted Resolution No. 7429 authorizing the lot line adjustment for Kathleen A. and Barton P. Simmons, 260 and 270 South Main Street.

***24.**

Calaveras Blvd/Piedmont Road Evans Road Intersection (Project No. 4208)

Adopted Resolution No. 7430 granting initial acceptance of the project subject to a one-year warranty period and reduction of the contractor's (O'Grady Paving, Inc.) faithful performance bond to \$40,745.00.

***25.**

City Hall – Modular Furniture (Project No. 8026)

Adopted Resolution No. 7431 granting initial acceptance of the project subject to a one-year warranty period and reduction of the contractor's (Corner Office) faithful performance bond to \$83,853.30.

***26.**

2001 Street Resurfacing (Project No. 4182)

Adopted Resolution No. 7432 granting final acceptance and release of the contractor's (Top Grade Construction) bond.

***27.**
McCandless Box Cul Vert
Repair (Project No. 4182A)

Adopted Resolution No. 7433 granting final acceptance and releasing the contractor's (Valentine Corporation) bond

***28.**
Civic Center
(Project No. 8026)

Adopted the following resolutions granting final acceptances and releasing of bonds for the following contracts in accordance with the Public Contract code:

<u>CONTRACTOR</u>	<u>RESOLUTION NO.</u>	<u>INITIAL ACCEPTANCE DATE</u>
A&B Painting	7434	12/03/02
A&D Automatic Gate	7435	11/22/02
Allied Fire Protection	7436	11/05/02
BBi Engineering	7437	01/21/03
B.T Mancini	7438	11/05/02
Cookson Rolling Doors	7439	9/17/02
Division Two Construction	7440	11/19/02
Enterprise Roofing (Roof)	7441	12/17/02
Enterprise Roofing (Foundation)	7442	12/03/02
Fetzer's	7443	11/19/02
Figueras Seating USA	7444	12/03/02
Graebel Erickson VanLines	7445	11/05/02
Interform Designers	7447	08/05/03
Ireland Interiors	7448	12/17/02
JJR Construction (Parking)	7449	12/03/02
JJR Construction (Site)	7450	12/03/02
Metal Air Iron Works	7452	12/17/02
R.L Hellwig Mechanical	7446	11/05/02
Rollie French (Drywall)	7453	11/05/02
Rollie French (Plaster)	7454	11/05/02
Service Metal Products	7455	12/03/02
Shooter & Butts	7456	11/19/02
Weidner Architectural Signage	7457	12/17/02

***29.**
National Night Out 2004

Adopted Resolution No. 7458 designating Thursday, August 5, 2004, as Milpitas National Night Out 2004.

***30.**
Piedmont Road Bike Lane and
Sidewalk Improvements
(Project No. 4214)

Approved budget appropriation of \$41,253, to be refunded by SCVTA, into the Piedmont Road Bike Lane and Sidewalk Improvements at St. John's Cemetery Project (Project No. 4214).

***31.**
Water System Air Relief
Valve Modifications-Phase I
(Project No. 7086)

1. Approved plans and specifications.
2. Authorized advertising for construction bid proposals.

***32.**
Main Sewage Pump Station
Site Improvements
(Project No. 6079)

1. Approved plans and specifications.
2. Authorized advertising for bid proposals.

***33.**
Geographic Information
Services

Authorized the City Manager to execute an amendment to the agreement with the Central Contra Costa Sanitary District for additional technical consulting services, in an increased amount of \$5,000, subject to approval as to form by the City Attorney.

***34.**
237/I-880 Interchange
(Project No. 4170)

Authorized the City Manager to enter into a cost share agreement with Valley Transportation Authority (VTA) for the 237/I-880 Interchange Project (Project No. 4170), in a not-to-exceed amount of \$75,000.00, subject to approval as to form by the City Attorney.

- *35.
Oakcreek Pump Station
(Project No. 8140)** Authorized the City Manager to execute an amendment to the agreement with Olivia Chen Consultants for the Oak Creek Pump Station (Project No. 8140) in the amount of \$62,140.00, subject to approval as to form by the City Attorney.
- *36.
Solid Waste Program** Authorized the City Manager to execute the consultant agreement amendment for additional Engineering Services supporting the Solid Waste Program, at a cost not-to-exceed \$12,000, bringing the total not-to-exceed amount to \$50,000, with Camp Dresser & McKee, subject to approval as to form by the City Attorney.
- *37.
Senior Housing Project
(Project No. 8103)** Authorized the City Manager to execute the agreement amendment with JMH Weiss, Inc. for Senior Housing Project (Project No. 8103), in the amount of \$20,000, subject to approval as to form by the City Attorney. (Councilmember Livengood abstained.)
- *38.
Pavement Improvement
Program (Project No. 4223)** Awarded Construction Pavement Improvement Program (Project No. 4223) Contract to C.F. Archibald Paving, Inc. in the amount of \$1,325,139.50.
- *39.
High School Pool Rental** Approved payment to the Milpitas Unified School District, in the amount not-to-exceed \$8,000.00, for rental of the Milpitas High School pools for the 2004-2005 summer season.
- *41.
“As Needed” Transportation** Authorized the City Manager to execute a contract with Fehr and Peers Associates, in the amount of \$35,000, for the “As Needed” Transportation Planning Services for the 2004-2005 fiscal year.
- *42.
Miscellaneous Vendors** Approved the following purchase requests:
1. \$6,000.00 to Clayton Jones for annual property rental of the Police firing range and training center for the Police Department. (Funds are available from the Police Department operating budget for this service.)
 2. \$5,800.00 to Hdl Software, LLC for annual software maintenance and support fees for the Finance business license computer system for the Information Services Department. (Funds are available from the Information Services Department operating budget for this service.)
 3. \$6,980.00 to Balch Petroleum Contractors & Builders, Inc. for upgrading the Corporation Yard underground fuel storage tanks with new vapor recovery system equipment in order to comply with California Air Resources Board regulations. (Funds are available from the Public Works Department operating budget for this service.)
 4. \$5,500.00 to DMG Maximus for preparation of the draft and final annual State Controller’s Report and annual Street Report for the Finance Department. (Funds are available from the Finance Department operating budget for this service.)
 5. \$7,512.01 to Dictaphone Corp. for annual maintenance and support fees for the 911 call logger/recorder system for the Police Department dispatch center. (Funds are available from the Police Department operating budget for this service.)
 6. \$5,729.00 to Industrial Door Service for emergency replacement of a rollup door operator mechanism on the east (exit door) door of the police garage for the Police Department. (Funds are available from the Police Department operating budget for this emergency repair.)

PUBLIC HEARINGS

1. City Clerk Gail Blalock reported before the Council was a request from the Milpitas Chamber

**Entertainment Event Permit
Art & Wine Summer Festival**

of Commerce for an Entertainment Event Permit for their Annual Art & Wine Summer Festival that would be held on August 21 and 22 along South Milpitas Blvd, in the same location as last year; the application had been reviewed and approved by the various City departments and the public hearing advertised; in addition, the Chamber was requesting waiver of the fee for the permit, the Business License requirements for the Festival, and permission to promote the Festival on the City's electronic message board. Ms. Blalock said staff recommended approval of the permit as requested, subject to the conditions from the Planning Department, the inspections required by the Fire Department, and receipt of the insurance certificate.

Tim Howard, representing the Chamber, thanked the Council for its prior support, he understood a letter describing who will be doing the clean up was being required this year and they would be getting the letter, and nothing was really different than last year. Mr. Howard asked for the Council's support and thanked them again for their support in the past.

Mayor Esteves opened the public hearing and invited comments.

Isaac Hughes asked how much potential revenue was being lost and thought the costs should be listed before the Council voted; commented on the sale of the 50th anniversary books, and said that revenue could be better spent if it went into the City coffers but until he saw a number of how much could be taken in, he didn't think it should be voted on.

MOTION to close the public hearing.

M/S: Dixon, Livengood.

Ayes: 4

Absent: 1 (Gomez)

Vice Mayor Dixon commented that she had mentioned to the Chamber Board that she had talked to the VTA to see if they would offer a free shuttle to the Festival from the light rail.

MOTION to waive the permit and business license fee requirements and approve the Entertainment Event Permit for a Summer Festival on August 21 and 22, 2004, as requested by the Milpitas Chamber of Commerce, subject to the conditions from staff and receipt of a certificate of insurance.

M/S: Dixon, Polanski.

Councilmember Livengood inquired about the restrictions on alcohol to make sure it doesn't get out into anyone's vehicle. Tim Howard responded the alcohol cannot leave the Festival area and signs would be posted along with trash containers so that no alcohol leaves the Festival area.

Mayor Esteves said he appreciated and commended the Chamber because the Festival was a lot of work.

VOTE ON MOTION:

Ayes: 4

Absent: 1 (Gomez)

**2.
Re-Adjusted Fee Schedule
Building Division**

Chief Building Official Edgar Rodriguez presented the resolution for adoption of the Re-Adjusted Fee Schedule for Building Division related services reporting that the proposed fees were based on the size, occupancy, and complexity of projects with the intent of recovering only reasonable costs per plan check, inspection, and administrative services provided.

Vice Mayor Dixon, referring to the 4 to 2 vote by the task force on the proposed fee schedule, inquired who voted which way. Mr. Rodriguez responded the "no" votes were by the Chamber and the Home Builders Association; everyone else was in agreement to bring the schedule to the Council.

Mayor Esteves opened the public hearing and invited comments.

Dr. Beverly Bryant, Executive Director, Home Builders Association of Northern California, South Division that includes Milpitas, expressed appreciation for being part of the focus group, thanked Mr. Rodriguez, and said it was a good and positive experience. Dr. Bryant said one reason they voted no was because they really wanted to look at all of the city fees related to the process of building a home, pointing out that item 15 on the agenda dealt with cost recovery for planning applications and services, which also applied to the construction of a home. Dr. Bryant further stated they would like to have was predictability and certainty in terms of fees and the process for the city; they have been working on these issues with many cities because it was important that a builder be able to count on what the particular fees will be in a particular community; and asked that this be delayed until the planning fees and any other fees come up so they may have the whole picture.

Normand LaCroix, Milpitas, said he enjoyed participating on the task force and saw firsthand the countless hours Mr. Rodriguez and his staff put in to create graphs and charts to develop the new fee schedule, and he thought as a whole, it was a good job. Mr. LaCroix commented that size rather than value was a more accurate way of assessing fees intended to recapture the cost of staff time, but he had some reservations with the lower end of the schedule; some of the fees for very small remodel project fees would quadruple, such as replacing a water heater or replacing a toilet and the same for very small tenant improvements. Mr. LaCroix said he had a long discussion with Veronica Valenti of the Building Division who developed most of the charts and graphs, and she explained that realistically, it takes a lot more effort to deal with the small projects and the cost was not being recovered.

Frank De Smidt said he was the Chamber's representative on the task force and echoed some of the other representatives' comments; he believed staff and Mr. Rodriguez did an outstanding job keeping the task force informed and educated about the fee system and the need to change from valuation to square footage; however, he echoed Mr. LaCroix's comments on the proposed costs for small jobs that would go up a lot and was very concerned about the enormous impact, especially on small businesses; hoped that the Council would take a look at it and make some adjustments.

MOTION to close the public hearing.

M/S: Dixon, Livengood.

Ayes: 4

Absent: 1 (Gomez)

Vice Mayor Dixon asked staff to comment on the cost in connection with safety, expressing concern that by increasing the cost, it might encourage homeowners to make improvements without benefit of a permit. Mr. Rodriguez responded there was a percentage of the population that will not get permits no matter what, but the advantages offered with the permit process were valuable. Mr. Rodriguez commented that they run into converted garages or water heaters that have been moved without permits and fires have occurred because a water heater wasn't properly installed.

Councilmember Livengood commented that compared to other communities, the proposed fees didn't appear to be out of line; however, he was sensitive to the first two case studies presented that equated to over a 400 percent increase and a 50 percent increase, noting some of the other fees would be going down. Councilmember Livengood suggested paring it down, not authorizing it all at once, stating that phasing it in would be better. Councilmember Livengood said he would like to see a more graduated table where it would start with a smaller increase and work its way up because he didn't want to scare people out of getting permits for things like water heaters. Councilmember Livengood suggested taking those two comparisons and bringing those numbers down; approve it with higher numbers but not the numbers in this report.

Mayor Esteves inquired how the Milpitas fees compared to other cities for the smaller type jobs. Mr. Rodriguez explained that Milpitas charges very minimal fees, the actual cost for inspections on a small job is about \$800, Milpitas currently charges \$118, the proposed increase would take that to about \$500, which was a considerable increase but still below the

cost to the City. Mr. Rodriguez went back to his slide showing that Milpitas was in the middle compared to other cities; in response to the other issue raised by Mr. LaCroix about fixed fees, Mr. Rodriguez explained that they were based on the approximate time it takes to provide those services. Mr. Rodriguez further explained that the fee schedule was prepared in response to the Council's direction to collect reasonable fees for services.

Councilmember Polanski said she agreed that 400 percent was a big increase and a lot of people would do their own work even though you talk about the safety issue and it makes sense to get a permit; she could see a gradual fee increase trying to get to cost recovery but not trying to do it in a great jump.

Vice Mayor Dixon suggested a compromise might be a two-year phasing in and asked if the Council might be looking at reducing the first phase by 30 percent. Vice Mayor Dixon said she wanted to be clear that this was not a give-away mode; there had to be a plan for recovery; it could be a two-year phasing so the community can gradually go into this mode; but she was still concerned about the water heaters.

MOTION to direct staff to re-look at this as a two-year phasing plan to implement cost recovery on behalf of the City of Milpitas for Building Inspection Division fees (the first year look at a 30 percent reduction) and come back the following year with the appropriate fees at that time.

M/S: Dixon, Polanski.

City Manager Wilson asked for a square footage limitation. Vice Mayor Dixon said Mr. Rodriguez had used 100 to 150 sq. ft. as the average. Chief Building Official Rodriguez commented that smaller projects were generally 100 to 150 sq. ft.

Mr. Rodriguez clarified that typically small additions were between 100 and 300 sq. ft. with the average size from 300 to 500 sq. ft. City Manager Wilson restated the motion for a two-year program, with the first year increase 70 percent of what was proposed for small projects up to 300 sq. ft.

Mayor Esteves inquired about small jobs such as replacing a water heater. Vice Mayor Dixon said that was a fixed fee that could be dealt with as a separate motion.

VOTE ON MOTION:

Ayes: 4

Absent: 1 (Gomez)

City Manager Wilson said staff would make the adjustment and bring the resolution back to the Council on that basis.

3. Revised Facility Use Rules City Hall Rental Fees

City Clerk Blalock reported this item was previously before the Council in January to solicit the Council's input on proposed changes to the Facility Use Guidelines and to propose fees for rental of City Hall; staff made revisions to the Guidelines and fees as directed by the Council and the proposal was back at this public hearing for approval. Ms. Blalock described the materials included in the Council's agenda packets and explained the changes from the January meeting were a reduction in the rental rates for the Rotunda Area and Council Chambers for Priorities III (resident non-profit groups) and IV (Milpitas residents). Ms. Blalock reported that with the reduction in these rental rates, staff proposed that any personnel costs associated with use of City facilities not be waiveable; the actual rental fees would still be eligible for waiver but not fees for required personnel. Ms. Blalock said the Council had also received a memo from the Recreation Services Manager explaining the changes to the Facility Use Guidelines and implementation of cancellation fees as discussed at the January Council meeting.

Mayor Esteves opened the public hearing and invited comments. There were none.

MOTION to close the public hearing.

M/S: Dixon, Livengood.

Ayes: 4

Absent: 1 (Gomez)

MOTION to adopt Resolution No. 7426 approving the revised Facility Use Rules and Regulations and City Hall Rental Fees, to be effective September 1, 2004.

M/S: Dixon, Livengood.

Ayes: 4

Absent: 1 (Gomez)

**4.
Amended Density Bonus
'S' Zone Approval/Amendment
Apton Plaza**

Acting Planning and Neighborhood Services Director Tambri Heyden reported this item was continued from the June 15, 2004, Council meeting to allow additional time for the applicant to review and consider the recommended conditions of approval; staff was requesting a continuance in order to meet with the applicant and his attorney to come to agreement on the Land Exchange Agreement.

Mayor Esteves opened the public hearing and invited comments. There were none.

MOTION to continue the public hearing and the request for approval of an amended Density Bonus, 'S' Zone Approval Amendment No. SA2004-7, Use Permit Amendment No. UA2004-2, Land Exchange Agreement and Reimbursement Agreement for the N. Main Street storm drain to August 3, 2004.

M/S: Polanski, Dixon.

Ayes: 4

Absent: 1 (Gomez)

**5.
Analysis of Impediments
To Fair Housing Report**

Principal Housing Planner Felix Reliford reported the Department of Housing and Urban Development (HUD) requires each entitlement city prepare an Analysis of Impediments (AI) to Fair Housing Report, which examines the policies and practices which potentially may limit a resident's ability to choose their housing in an environment free from discrimination. Mr. Reliford further reported the 2004 Updated AI Report identified several impediments to fair housing within Milpitas including (1) demographics, (2) housing stock, (3) land use and zoning, (4) public policies housing affordability, (5) advertising, (6) cases of housing discrimination, and (7) awareness of local fair housing services; staff reviewed the Analysis and identified those impediments that could be addressed by staff; however, other impediments identified have policy implications and may require further review and action by the Council prior to forwarding the report to HUD.

Mr. Reliford reviewed the impediments that can be addressed administratively by staff and the impediments that have policy implications related to Land Use and Zoning. Mr. Reliford reported the AI Report recommended that the City eliminate the Conditional Use Permit requirement for group homes of 7 to 12 persons and reduce regulations required of secondary dwelling units; both these impediments were included in the 1998 AI Report, and staff previously recommended no action to the Council. Mr. Reliford noted that the City complies with State law and has the option of requiring a Conditional Use Permit for group homes of 7 or more; the City's ordinance regulating secondary units was just updated last year to comply with recent State law changes; and staff recommended no changes to the secondary dwelling unit or the group home regulations.

Mr. Reliford introduced Ann Marquardt, Executive Director, Project Sentinel, who prepared the report, and reviewed the recommendation to adopt the Analysis of Impediments Fair Housing Report subject to maintaining the current Zoning regulations for group homes and secondary units.

Ann Marquardt, Project Sentinel, said the purpose of the report was to identify any existing impediments; most of those impediments identified had to do with Project Sentinel's work in the fair housing field so they knew they have a lot of work ahead to accomplish that, like having no foreign language literature available in the community; the assessment goes through 2003 and the literature they develop will go towards resolving the impediment rather than eliminating it but they have started making progress. Ms. Marquardt urged that as far as City Hall procedures, to keep open an eye for State rules changes regarding group homes. Ms.

Marquardt complimented the City, stating that it came out with a pretty good bill of health on this and also complimented Mr. Reliford for taking a lead role in forming the Countywide Fair Housing Task Force.

Mayor Esteves opened the public hearing and invited comments. There were none.

MOTION to close the public hearing.

M/S: Polanski, Livengood. Ayes: 4 Absent: 1 (Gomez)

Mayor Esteves inquired if this would be coming back to the Council. Mr. Reliford responded staff could report back but no Council action was required. Mayor Esteves asked if some type of fiscal impact was expected. Mr. Reliford responded no.

MOTION to adopt the Analysis of Impediments Fair Housing Report, subject to maintaining the current Zoning regulations for group homes and secondary dwelling units.

M/S: Dixon, Polanski. Ayes: 4 Absent: 1 (Gomez)

JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

**RA1.
CALL TO ORDER**

Mayor Esteves called to order the regular meeting of the Milpitas Redevelopment Agency, meeting jointly with the City Council, at 9:00 p.m.

**RA2.
ROLL CALL**

Present were Mayor Esteves, Vice Mayor Dixon, and Agency/Councilmembers Livengood and Polanski. Agency/Councilmember Gomez was absent.

**RA3.
MINUTES**

MOTION to approve the Redevelopment Agency minutes of June 16, 2004, including joint meeting with the City Council, as submitted.

M/S: Livengood, Polanski. Ayes: 4 Absent: 1 (Gomez)

**RA4.
AGENDA**

MOTION to approve the Agenda and Consent Calendar as submitted.

M/S: Dixon, Polanski. Ayes: 4 Absent: 1 (Gomez)

Vice Mayor Dixon commented that she wished the project management software, approved for item RA5, had been available five years ago for the building of City Hall noting that this particular software would provide real time coordination with consultants and contractors by tracking project design and construction related correspondence and provided budget tracking and documentation management. Mayor Esteves inquired how this differed from Primavera, the more commonly used tool in construction? Principal Engineer Mark Rogge responded this provided project management as opposed to scheduling software and was a more comprehensive management tool.

***RA5.
PURCHASE ORDER
LIBRARY PROJECT NO. 8162**

Waived the bid process and authorized staff to execute a purchase order with Constructware Solutions Group in an amount not-to-exceed \$9,000.00, subject to approval as to form by the City Attorney.

***RA6.
UPGRADE FIRE ALARM
PANEL, CITY HALL**

Awarded upgrade of City Hall Fire Alarm panel to Diversified Fire Products in the amount of \$22,000

**RA7.
LIBRARY PROJECT
ARCHITECT SELECTION**

Principal Engineer Mark Rogge described the process utilized to select a consultant to provide design services for the new library, including preparation of construction plans and evaluated, field visits were made to the top three qualified firms, and the Library Subcommittee interviewed the three highest ranked consultants and was recommending the firm of Group 4. Mr. Rogge introduced Wayne Gehrke with Group 4.

Wayne Gehrke said on behalf of Group 4, it was an honor to be recommended as the architect for the Milpitas Library. Mr. Gehrke made a PowerPoint presentation describing Group 4's experience, highlighting their experience over 30 years serving cities throughout Northern California, their experience with library projects, awards they have received, and their work with historical structures. Mr. Gehrke introduced Group 4 Project Manager Dawn Merkes, Project Architect David Sturges, and Project Designer David Schnee who were present with him, thanked the Council for the confidence shown in Group 4, and said they looked forward to creating an exceptional library for Milpitas.

Mr. Rogge reviewed the recommendation from the Library Subcommittee to authorize staff to negotiate a consulting services contract with Group 4 for design of the library.

Vice Mayor Dixon said when we talk about establishing high but realistic goals, this was something she was glad to see because it was one of the stumbling blocks dealt with four years ago; she was glad to see this and hoped that the architect team was on the same page with the City's excellent team that carried us through the building of City Hall.

Councilmember Polanski said she had faith in the staff and the committee and was very excited with the presentation and looking forward to working with Group 4.

Mayor Esteves said he and Councilmember Livengood were on the Library Subcommittee, and he thought the Milpitas library would be second to none.

Councilmember Livengood said they interviewed some very good firms but it was very clear Group 4 was ready for the challenge; he was impressed with their breadth of knowledge and had significant confidence in their ability to bring this project to fruition.

MOTION to authorize staff to negotiate a consulting services contract with Group 4 Architecture, Research & Planning, Inc., for the design of the library.

M/S: Livengood, Dixon.

Ayes: 4

Absent: 1 (Gomez)

***RA8.**

**CONSTRUCTION CONTRACT
SENIOR CENTER
PROJECT NO. 8151**

Awarded construction contract to Ranis Construction & Electric, Inc., in the amount of \$164,400.00.

RA9.

ADJOURNMENT

There being no further Redevelopment Agency business, Mayor Esteves adjourned the Redevelopment Agency meeting at 9:18 p.m.

The City Council meeting continued.

REPORTS OF OFFICERS & BOARDS

7.

Community College Classes

Vice Mayor Dixon commented this was one of many partnerships with the Milpitas Unified School District and would provide community college classes at Milpitas High School; the School District would provide the rooms at Milpitas High School, the College District would provide the teachers, and it was proposed that the City contribute to the facility maintenance costs of the classrooms (\$15/hour). Vice Mayor Dixon said she was very excited about this, the programs would be geared to completing an AA degree, a brochure would be coming out this summer, and she thought this was a win-win situation for everybody.

Mayor Esteves said the project would start this fall (September), more announcements would be coming, and it was a direct service to residents and would bring a lot of positive value. Mayor Esteves commented that he was excited that Milpitas, for the first time, will have a higher level of learning.

Councilmember Livengood said the reasons why he thought this was an excellent opportunity were because (1) he was a big believer in community colleges and (2) for a long time he has thought we should do everything we can to get as much use out of the schools. Councilmember Livengood said he thought it was a very positive development and commended the Mayor and Vice Mayor for bringing this forward.

Councilmember Polanski echoed Councilmember Livengood's thanks to the Mayor and Vice Mayor for bringing this proposal forward, she believed it was excellent for the community, and it was something that would be for everyone and would increase the quality of life for all the citizens.

Vice Mayor Dixon commented that San Jose/Evergreen College District Trustee Ron Lind brought the idea forward a few years ago. Vice Mayor Dixon also expressed appreciation to School Board President Mike Mendizabal and Vice President Bill Foulk, stating that it was a team effort.

MOTION to approve the City's support of community college classes held at Milpitas High School and conceptually approve a \$15 per hour classroom maintenance costs to support the use of the high school classrooms; approve a \$1,500 advertising budget to promote the community college classes in Milpitas.

M/S: Dixon, Polanski.

Ayes: 4

Absent: 1 (Gomez)

**8.
Safe Routes To School
Program Extension**

Vice Mayor Dixon reported the Safe Routes to School Program was a Statewide program that will expire in January 2005, and she was asking the Council to joint with other cities in supporting an extension of this program.

Isaac Hughes said he had been walking around town with some friends and noticed at various intersections (Jacklin/Arizona, Jacklin/Milpitas Blvd, and others) that when he pushes the walk button on the signal, he hardly gets halfway across the street before the light starts flashing not to cross. Mr. Hughes expressed concern that this wasn't enough time to cross, especially for seniors and little kids and thought this should be periodically checked at major intersections.

MOTION to adopt Resolution No. 7428 in support of extending the statutory authorization for the Safe Routes to School Program.

M/S: Dixon, Polanski.

Ayes: 4

Absent: 1 (Gomez)

**9.
RFQ/RFP for BART Station
Area Plan**

Principal Transportation Planner Joe Oliva reported in March 2002, the Council adopted the Midtown Specific Plan, which specified the preparation of a Transit Area Plan/Precise Plan in the BART/Light Rail Station vicinity prior to development occurring on those parcels; since that time, the Valley Transportation Authority prepared a Draft Environmental Impact Statement/Draft Environmental Impact Report for the BART Extension to Milpitas, San Jose, and Santa Clara that analyzed several land use concepts immediately adjacent to the future BART Station. Mr. Oliva further reported in response to the VTA, Milpitas staff submitted additional BART Station concepts for consideration and proceeded to review the key issues that will be addressed in the Transit Area Plan/Precise Plan; staff was in the process of developing a Request for Qualifications/Request for Proposal to solicit professional consultant services for the preparation of a Transit Area Plan/Precise Plan. Mr. Oliva said this project would require high-level policy decisions throughout preparation of the Plan and supporting environmental Review, and the Transportation Subcommittee was requesting that the Council appoint a Transit Area Plan Council Subcommittee, since the Transportation Subcommittee deals with major transportation policy issues.

Vice Mayor Dixon said this particular area was being called a "multi-modal transportation hub" and will be the first of its kind in Santa Clara County, so it was important to have a comprehensive, well-thought out plan. Vice Mayor Dixon further stated that Milpitas could

become the end station for BART, whether or not it was wanted, which makes this particular area so important that the City needs to be in control as to how it wishes it to be planned, how it wants it to be developed, and how it will be able to go out for years to come. Vice Mayor Dixon said it was very important that we look at this as a master plan subsection of Midtown.

MOTION to:

1. Proceed with the development and release of the BART Station Transit Area Plan/Precise Plan RFQ/RFP and release in July 2004;
2. Pursue VTA Community Design and Transportation (CDT) Planning Grant funds as they become available; and
3. Appoint Mayor Esteves and Vice Mayor Dixon as a Transit Area Plan Subcommittee.

M/S: Polanski, Livengood.

Ayes: 4

Absent: 1 (Gomez)

RECESS

Mayor Esteves recessed the City Council meeting at 9:39 p.m. The City Council meeting reconvened at 9:47 p.m.

UNFINISHED BUSINESS

12. Mayor's Term Length Proposed Ballot Measure

City Attorney Mattas reported following the CAC's presentation on June 1, 2004, the Council directed that staff return with the final language for a ballot measure extending the term of office for the Mayor from two to four years commencing with the term of office starting in November 2008; at that same meeting, the Council also directed preparation for Council's consideration a modification of the term limit ordinance to limit the number of terms the Mayor can serve to two four-year terms assuming that the term itself was extended; the first resolution would place on the November 2, 2004, ballot a measure to extend the term of office for the Mayor from two to four years commencing in 2008; as worded, the measure would only take effect if the companion measure modifying term limits was also approved by the voters; also proposed were two separate ballot measures linked together with provisions requiring that they both be approved before either one of them could take effect; the second ballot measure would limit the number of terms a person may serve as Mayor to two four-year terms and would limit the total number of consecutive terms a person may serve either as a Councilmember or Mayor to four terms; the measure would only take effect if the ballot measure changing the Mayor's term from two to four years was also approved; as requested by the Council, also included in the packet was a chart showing the effect on each current member of the Council if both measures were adopted; if the Council elected to approve both resolutions, the Council should also direct the preparation of an impartial analysis for each measure by the City Attorney and also decide whether the Council desired to appoint Council representatives to write the ballot arguments in favor of the measures and the rebuttal, if necessary. Mr. Mattas pointed out that at the last Council meeting, there was some discussion about another alternative of two four year term limit; if the Council wanted to proceed with that (a total of two four-year terms), it would be necessary for staff to prepare some revised materials and bring those back to the Council before August 6 for discussion

Councilmember Polanski said she thought the City Attorney's preparation of all the information helped to emphasize how confusing the City's term limits were to begin with and in reviewing all of this, it was difficult for her to understand all the scenarios that could play out; after reviewing the material and not wanting it to affect those serving now, and since everything has to be prospective in nature, it was her opinion to just follow the recommendation of the Community Advisory Commission, which did all of the research and recommended a ballot measure for the Mayor's term going from two to four years, with two terms, and beginning in 2008; and based on everything she had read, that scenario made the most sense to her at this time.

Councilmember Livengood asked how that differed from what was being presented. Councilmember Polanski said she wasn't sure how that was different from what was presented. Mr. Mattas said he was comfortable that the Council was very clear with what the

first resolution did (extends the Mayor's term from two to four years and also included a provision that if the second measure does not pass, then it does not go into effect either); the second measure, in the present term limits ordinance, it limits the Council to three four-year terms and it also provides that the Mayor can serve three terms and that was put into effect when the Council had two-year terms for the Mayor; the recommendation of the CAC was if you went to four-year terms for the Mayor, to limit the Mayor to two terms, which gives the Mayor the maximum of eight years in office as opposed to a maximum of six as Mayor.

Mayor Esteves commented that one thing he emphasized at the last meeting was that he would rather have a proposal where current or incumbent elected officials would not be impacted by the term limits; asked if current or incumbent officials could still conform to the current, existing term limits and the new proposal be applicable to any newly elected officials so that nobody could say that we are proposing this because we are trying to get an extension. Mr. Mattas responded the challenge with that approach, since term limits were prospective in origin, there was really no way to effectively have new term limits that completely don't impact any of the existing Councilmembers; there wasn't any way to construct it to completely avoid any impact and what he had tried to do in showing all the different scenarios was to show there really was not a differential impact on any of the Councilmembers, everybody ends up with the possibility of two more years, depending on how people would run for office; and anyone new running for office in 2006 would have the opportunity to stay in office for up to 16 years.

Councilmember Livengood said if he understood what Councilmember Polanski proposed, the confusion begins when you add the term limit change to the four-year Mayor change, so she was saying stick with the four-year Mayor term and do away with the change in term limits, which wouldn't have any effect on the current Council except if someone was to run for Mayor in 2008 and get elected to a four-year term. Mr. Mattas responded that was partly correct in that the present ordinance allows there to be three terms served as Mayor; if one of the most recently elected Councilmembers ran for Mayor and term limits weren't changed, they could actually serve three terms as Mayor (three four-year terms) and would have a maximum of 16 years, which was the same thing you get under the second ballot measure; the difference was that the CAC had recommended if you went to a four-year term for the Mayor, that there only be two four-year terms available as opposed to three.

Councilmember Polanski expressed concern that it would get so complicated even to change it that she wasn't sure the CAC or the Subcommittee that worked this through truly understood how complicated all of this could be because they were looking at trying to get the Mayor's term the same as Councilmembers and shorten the number of terms so that the Mayor could be more productive and get more regional support; she didn't think they were looking at it to expand everybody's term and thought if this was taken back to the CAC, they might recommend that this not be put on the ballot; and because it was so complicated, it probably made more sense to not put it on the ballot and stay with the current system.

Mayor Esteves said it was very complicated and expressed concern that if the Council was confused, it would be very hard to put something on the ballot that would a course or class to understand; he thought that would be impractical and the complexity would kill the expected benefit.

Councilmember Livengood said he had talked with a lot of people while out walking precincts and hadn't found very many citizens who were either concerned or supportive of going from two to four years; he still thought it was a good idea; however, he didn't want it to become confusing because if it is confusing, it would be a no vote and that would be an exercise in futility; maybe what needed to be looked at long term was creating something that would take effect when the five incumbents were no longer eligible under current term limits, but that would be down the road quite a ways. City Attorney Mattas commented that the challenge with that, because of staggered terms, there was no chance of anyone not being affected. Councilmember Livengood said if there was no will to move forward with this, he wouldn't argue about it; he supported the four-year Mayor term but he didn't want to put anything on

the ballot that would confuse people as there were other important issues that would be on the ballot and he didn't want peoples' focus drawn away from other things that were important to the community; if that was the direction, he didn't have a problem waiting.

Vice Mayor Dixon said she thought people really do believe in term limits but a great disservice was done to the community in 1996 when this concoction of term limits was proposed; she thought to be able to go out 14 years was not good or democratic for a city this size that wants to be an inclusive city and let more people get involved.

Mayor Esteves suggested going back to Councilmember Polanski's suggestion to bring this back to the CAC for more discussion.

Isaac Hughes said if everybody would just say for themselves what they were willing to give up, whenever this is voted on or implemented, no matter who people are that are impacted, we need to know right now who is willing to give up part of their term in order to start that even stream of equalizing when who gets into office and who has to leave office; until we know what you are willing to give up, we don't know what you're talking about; if you are the person caught in the middle and you have to leave office early, are you willing to do this to make this happen.

Vice Mayor Dixon said she stated at the last meeting to keep it simple, she thought the current ordinance was so convoluted, and she thought 12 years was more than ample for a city this size,

City Attorney Mattas said any modification would have some impact initially other than just limiting folks to an eight-year total for those sitting on the dais at the time the election happens; that couldn't be avoided but would have the prospective effect of anybody elected from whenever it takes effect on would be limited to whatever number of years the voters approved.

MOTION to table the issue until further notice.

M/S: Dixon, Livengood.

Ayes: 4

Absent: 1(Gomez)

**13.
Solid Waste Franchise
Extension/Service Upgrades**

Councilmember Polanski removed this item from the Consent Calendar for clarification and said she did not see included some of the concerns that citizens had brought forward about a Spring clean up where residents might be able to put their items in the street for pick up. Principal Civil Engineer Darryl Wong responded that this was included in item 3 of page 4, and might involve having a bin available in the neighborhood with a Spring clean up being the intent. Councilmember Polanski said she would still like to pursue a program where things could be put in the street as some residents are older and unable to lift or throw things into a large bin and she wanted to emphasize that area.

Vice Mayor Dixon stated that since the Council first voted to go ahead with this potential extension of the BFI contract (to 2017), she had the opportunity to talk with Waste Management about competitive areas they felt Waste Management could do a better job. Vice Mayor Dixon cited, as an example, the comment on page 3 of the memo from Mr. Wong, that BFI anticipates purchasing a new fleet and asked what kind of guarantee there would be that BFI would do this; Waste Management said it already had a new fleet. Vice Mayor Dixon said the single-stream recycling was also very important and she saw it as a potential stumbling block but hoped it wouldn't be; however, it was very clear that the County wanted improved service for the community, in particular the single-stream recycling because the three bins weren't working out.

MOTION to authorize staff to proceed with BFI Franchise extension and rate adjustment negotiations.

M/S: Polanski, Dixon.

Ayes: 4

Absent: 1 (Gomez)

NEW BUSINESS

14. Hillside Ordinance Ballot Measure

City Attorney Steve Mattas reported in August 1992, the Council adopted the current Hillside Ordinance; the proposed ballot measure would have the voters decide whether voter approval would be required before any amendment to the current Hillside Ordinance; if approved by a majority of the voters, this Measure would then require voter approval or ratification following any City Council actions to amend the Hillside Ordinance prior to December 31, 2018. Mr. Mattas said this date was the same termination date as the Urban Growth Boundary (UGB), and the action of the Council would be exempt from CEQA as this action did not modify the existing Hillside Ordinance. Mr. Mattas further report if the Council elected to place this on the ballot, the Council should also direct the City Attorney to prepare an impartial analysis and authorize specified members of the Council to prepare and submit a ballot arguments and rebuttals in favor of the measure.

Councilmember Polanski said, as a member of the City Attorney Subcommittee, in discussing this with the City Attorney and Vice Mayor Dixon and speaking with community members since the UGB (UGB) Measure was approved, she found a lot of people think it is the Hillside Ordinance; placing this on the ballot, as was done with the Urban Growth Boundary so they know the Hillside Ordinance would be in effect as long as the UGB, was something she felt the voters should have the ability to make a decision on.

Vice Mayor Dixon said this came about not spontaneously but was something that had been in the making for the past several years; the current Hillside Ordinance has been around since 1992, it was working, and there were safeguards built into it for a variance process; what has happened, as Councilmember Polanski stated, was people in the community were confused because they think it was already passed by the UGB. Vice Mayor Dixon commented that she has to explain that we have a Hillside Ordinance but because it is just an ordinance, it just takes three people to make changes or make it go away without going to the public; she wanted to make it simple and fair; it aligns both the Hillside Ordinance and the UGB; and it would let the public decide what to do. Vice Mayor Dixon further stated it would not change the Hillside Ordinance as it is and it would give the voters the ability to decide on any changes or amendments, regardless of who sits on the Council.

Richard Ruth, Milpitas, said he was a hillside property owner and also was a member of the Hillside Review Committee in 1991-92, which met for 2 ½ years and hammered out the current ordinance. Mr. Ruth further stated those meetings involved the public and permitted free and open debate by the citizens and expressed concern with the process that allows an initiative concerning the Hillside Ordinance be brought before the public without public notice or public debate or public input. Mr. Ruth said as a hillside property owner, he never received any information that this was being discussed by a City Attorney Subcommittee; disagreed that a CEQA study wasn't needed and thought a study should be done to let the public know of any potential ecological/environmental disasters; and expressed concern that this was planned in secret without any notifications to the property owners.

Isaac Hughes said he was listening to the Council talk about the Hillside Ordinance while looking at the ugliest scars in the valley and asked why the gravel quarries were allowed in the hillsides. Mr. Hughes also expressed concern for the earthquake fault running through the hills and people building on the fault line. Mr. Hughes also talked about yielding time to another speaker, suggested the Council watch CNN to see how real legislation is done, and thought the best way to know freedom was working was to have a split vote.

Vice Mayor Dixon said she was glad Mr. Hughes brought up the quarries and asked for a future Council agenda item addressing the history and update on any hillside quarry in the Milpitas sphere of influence.

Councilmember Livengood said he had no quarrel with the concept of putting this on the ballot but did have some concern about the speed this occurred; expressed concern for hillside

property owners and having enough public input, sentiment, and comment; he was not bothered by the basics of the ordinance or the wording but was a little uneasy about this proceeding without giving the people who own land up there an opportunity to be heard. Councilmember Livengood suggested delaying this to have a public hearing.

Mayor Esteves asked the City Attorney what would be the latest date to put this on the November ballot. Mr. Mattas responded August 6, 2004. Mayor Esteves said the hillside issue was a major issue for the residents of Milpitas and he would be very comfortable putting this into the people's hands. Mr. Mattas said if the Council provided final direction on August 3, it could be transmitted to the Registrar of Voters before the deadline. Mayor Esteves commented that was almost a month's notice to the public.

Vice Mayor Dixon said there was no secret meeting; this came about out talking to the community; there was confusion with people thinking the Hillside Ordinance was the UGB and nothing can change it; no aspect of the ordinance as it is was being changed; and if Mr. Mattas would have the draft ready to go, she didn't have a problem continuing this, but she didn't want to miss the deadline. Mr. Mattas said if the Council elected to continue the item, staff could have the impartial analysis ready by that time. Vice Mayor Dixon inquired about the Council's Special Meeting on July 29th and suggested continuing it until then.

Councilmember Polanski said she wanted to be sure the Council directed staff to prepare the impartial analysis and pointed out the other question was to determine whether the Council wanted to appoint representatives to prepare arguments. Mr. Mattas said if the Council wanted to identify representatives tonight to prepare arguments in favor, that could be done and the arguments could be available prior to that time as well. Councilmember Polanski said she supported giving this another 30 days and directing staff to prepare the ballot statement, making appointments to do the political arguments, and having it ready for the July 29 meeting.

MOTION to schedule a public meeting on July 29, 2004, and direct staff to return at the Special Meeting with the material presented this evening (the ballot question), the impartial analysis, and appoint Vice Mayor Dixon and Councilmember Polanski to write the arguments in favor of the measure.

M/S: Polanski, Livengood.

City Attorney Mattas cautioned that the Council should be clear if it was a public hearing on the 29th, to provide a scope as to the public notice the Council wanted sent out or if the Council wanted Brown Act notice. Mayor Esteves said he thought a regular public meeting was wanted. Councilmember Polanski added a public meeting with public input. Councilmember Livengood said what he was looking for, in addition to having a public meeting, was a way for land owners to get notice and the public at large to have more notice and suggested a newspaper ad. Mr. Mattas said the Council could direct that staff put an ad in the Post for a public meeting. Councilmember Livengood said that would satisfy him. Mayor Esteves said he wanted to make sure the deadline for placing the measure on the ballot could be made. Mr. Mattas responded yes, the deadline could be met.

VOTE ON MOTION:

Ayes: 4

Absent: 1 (Gomez)

**15.
Cost Recovery Proposal
Planning Applications**

Acting Planning Manager James Lindsay, using a PowerPoint presentation, reviewed the Planning Division's proposal for cost recovery enhancements for Planning applications. Mr. Lindsay reported based on a planning fee study, staff determined that the current recovery rate for planning services was 85 percent for Private Job applications and 17 percent for flat fee applications, not the 100 percent provided for in the Municipal Code, and 62 percent of all Private Job account projects over the past three years exceeded the initial deposit amount. Mr. Lindsay reviewed proposed changes to Private Job applications and proposed flat fee changes, presented examples of how Milpitas would compare to other cities with the proposed cost recovery enhancements for Planning review of a new restaurant and of a new building less

than 10,000 sq. ft., and reviewed the recommendation to direct staff to prepare an updated fee schedule.

MOTION to direct staff to prepare an updated fee schedule that (a) achieves the intent of the Municipal Code cost recovery system adopted in 1995 and (b) expands the system to services not currently recovered.

M/S: Livengood, Dixon.

Ayes: 4

Absent: 1 (Gomez)

**17.
Co-Sponsor With Chamber
Candidates' Forum**

Councilmember Polanski removed this item from the Consent Calendar and stated she had no problem with the co-sponsorship of the candidates' forum; she would like to see included as part of the recommendation, since so much work had been done on ethics, that the Chamber work with Dr. Shanks and the Ethics Steering Committee to see if Dr. Shanks might assist or have a part of it.

City Manager Wilson commented that historically, the candidates' forum has been independent of the City and the reason for the co-sponsorship was to relieve the Chamber of any associated fees. Councilmember Polanski said she would like to see if the Chamber would be open to Dr. Shanks, the Chamber would still conduct the forum, but Dr. Shanks' ideas and experience might be beneficial.

Frank De Smidt, Chamber of Commerce, said this was the first time he had heard of this concept, he didn't see any problem as long as there was no comfort level problems with any of the candidates; he had already contacted the League of Women Voters to assist to get some volunteers so no one could surmise that anyone taking part in the forum is biased; and was trying to make it as fair and balanced as possible.

Councilmember Polanski said she appreciated that and it might be just a matter of Mr. De Smidt and the Chamber President or Chamber Committee working on this spending a few minutes with Dr. Shanks.

MOTION to approve co-sponsorship with the Milpitas Chamber of Commerce of the Candidates' Forum by providing the use of the Council Chambers and broadcasting the event on Channel 15 (with the Chamber making all the arrangements, inviting all candidates, determining the format, and publicizing the event) and to include a discussion with Dr. Shanks to gain the benefit of his experience.

M/S: Polanski, Dixon.

Ayes: 4

Absent: 1 (Gomez)

ORDINANCES

**21.
Open Government Ordinance
Ordinance No. 262
(Introduce)**

City Attorney Mattas reported at the June 18, 2004, meeting of the City Attorney Subcommittee, the Subcommittee requested an ordinance be prepared governing public disclosure of financial conflicts of interest for elected and appointed officials, with related provisions regarding conduct of elected and appointed officials and other issues regarding open government and the promotion of accountability and transparency in the affairs of City governance. Mr. Mattas further reported the Subcommittee provided direction for drafting an ordinance and the City Attorney prepared the ordinance before the Council that contained several interrelated provisions: requires City Council members to publicly announce actual or potential financial conflicts of interest with agenda items at the start of Council meetings; requires a period of public reflection and recognition regarding the implementation of values contained in the City's Code of Ethics; regulates disclosure and public access to financial conflict forms of public officials; requires the City Clerk to prepare City Council and Planning Commission attendance and voting records as a public record; requires city officials to submit updated meeting calendars to the City Clerk; encourages the use of available technologies to promote citizen access to City resources; prohibits City Council and Planning Commission members from using their former office to assist applicants through the City process once they have left office; prohibits membership on certain enumerated volunteer positions while in

office; creates a registration requirement for lobbyists and disclosure requirements for City Officials who enlist the help of lobbyists and consultants; includes a retention and access policy for summary closed session minutes; creates distribution requirements for reports and work requests to the City Council; and has the City strive to make GIS technology available to the public for better access to government operations. Mr. Mattas said the City Attorney Subcommittee recommended introduction of the ordinance.

Isaac Hughes asked if the Council was talking about wireless here or was that another topic. Mr. Mattas responded there was nothing wireless related here. Mr. Hughes said other cities get money to put boxes on poles and asked why doesn't Milpitas take what it can get at this time and have a deposit, like a rental agreement, on the poles so if a contract doesn't work out and people pull out of the agreement, we have cash for our own people to take the boxes off. Mr. Hughes asked why don't we have wireless laptop available for the citizens so they can go to a park and sit with a laptop; he wouldn't have to come to a Council meeting if he could watch the Council meeting wireless; and asked if we are ever going to get back to that or would it be looked at in the near future.

Vice Mayor Dixon commented that the Council recently had a proposal by Councilmember Gomez to shine light on open government but what frustrated her at that meeting was that it was discussed over two nights and she was on the record as wanting to compromise; what concerned her and why she didn't support it was because Councilmember Gomez wasn't open to any suggestions or looking at everything one at a time; what also concerned her with what was proposed was that it was written more in legal terms and wasn't written in such a way a lay person could read and know what it meant. Vice Mayor Dixon further commented that what was proposed this evening was summed up in Section 1, Purpose, and proceeded to read the section for the benefit of the public. Vice Mayor Dixon said she thought what the Subcommittee had presented covered all the areas that Councilmember Gomez was concerned about and went even further; one of the areas of concern was to really know what your elected officials are involved with and the ordinance proposed to make that information and a number of other items available on the City's web site. Vice Mayor Dixon further stated that the Planning Commission was included in some of the aspects because of a particular recent incident involving a Planning Commissioner representing a private developer.

Councilmember Polanski said she thought the document was very easy to read and understand, was very straight-forward and would help with transparency in government and hold elected officials accountable. Councilmember Polanski further stated she was supportive of the other proposal but it included some things regarding Closed Session that concerned her; she thought the current proposal would help the Council be more accountable to the citizens, would give them access, it was easy to understand, and she hoped her fellow Councilmembers would be supportive.

Mayor Esteves inquired if a standard format would be established for the calendar. Mr. Mattas responded the expectation of the Subcommittee was to use the City calendar. Councilmember Livengood said he was a little uncomfortable using the City calendar as most his appointments were done on the desk top at his office; he could adjust that to show only City appointments and was looking for a way of doing it electronically, if possible.

City Attorney Mattas read the title of Ordinance No. 262 adding Chapter 310 to Title I of the Milpitas Municipal Code establishing regulations governing the conduct of elected and appointed officials and required disclosure of interests and contacts.

MOTION to waive the reading beyond the title.

M/S: Polanski, Dixon. Ayes: 4 Absent: 1 (Gomez)

MOTION to introduce Ordinance No. 262.

M/S: Polanski, Dixon. Ayes: 3 Noes: 1 (Livengood) Absent: 1 (Gomez)

RESOLUTIONS

**22.
Resolution of Necessity
Abel/Calaveras Right Turn**

City Engineer Mike McNeely reported acquisition of roadway right-of-way from four property owners was necessary for construction of a dedicated right turn lane from north bound Abel Street to eastbound Calaveras Blvd; the Resolution of Necessity included four findings required by California Eminent Domain Law and required approval by at least a four-fifths vote of the Council. Mr. McNeely noted a tentative settlement had been reached with N&M Plaza and staff would be back in August with an item to accept that.

Mayor Esteves invited comments. There were none.

MOTION to adopt Resolution of Necessity No. 7427 determining that the public interest and necessity require the acquisition of certain land and directing the filing of eminent domain proceedings.

M/S: Dixon, Livengood.

Ayes: 4

Absent: 1 (Gomez)

BIDS & CONTRACTS

**40.
Contract Amendment
Dr. Thomas Shanks
Ethics Project**

Councilmember Polanski removed this item from the Consent Calendar and commented that the Council just approved Ordinance No. 262 that included a provision for lobbyists; in the agreement with Dr. Shanks, it talked about developing an ordinance at a cost of \$7,000; and inquired if the contract amount was a not-to-exceed amount and how it would mesh or how that would be affected.

Acting Planning & Neighborhood Services Director Heyden responded the amount was up to \$7,000, and what they were trying to capture was the possibility of any gaps in the ordinance introduced tonight and the objectives the ethics program was trying to achieve. Ms. Heyden pointed out that some of the deliverables under task #7 had been eliminated thereby reducing the total contract amount to \$40,500.

MOTION to approve Amendment No. 2 to the Consulting Services Agreement between the City of Milpitas and Dr. Thomas Shanks Consulting to complete the Ethics Project Implementation Measures at a cost not-to-exceed \$40,500, to be funded by contingency reserve.

M/S: Polanski, Livengood.

Ayes: 4

Absent: 1 (Gomez)

ADJOURNMENT

There being no further Council business, Mayor Esteves adjourned the City Council meeting at 11:36 p.m.

Gail Blalock, CMC
City Clerk

**The foregoing minutes were approved by the City Council as submitted on
August 3, 2004.**

Gail Blalock, City Clerk

Date

APPROVED MINUTES
CITY OF MILPITAS

Minutes:	Adjourned Regular Meeting of Milpitas City Council (Including Joint Meeting with Redevelopment Agency)
Date of Meeting:	June 16, 2004
Time of Meeting:	7:00 p.m.
Place of Meeting:	City Hall Council Chambers, 455 E. Calaveras Blvd.

ROLL CALL

Mayor Esteves called to order the adjourned regular meeting of the Milpitas City Council at 7:00 p.m. Present were Mayor Esteves, Vice Mayor Dixon, and Councilmembers Gomez, Livengood, and Polanski.

PLEDGE

Mayor Esteves led the Council and audience in the Pledge of Allegiance.

UNFINISHED BUSINESS

**8.
Ethics Code
Training Sessions**

City Manager Thomas Wilson reported this item was for the purpose of setting special meeting dates to hold two Ethics Code training sessions for the Council.

Isaac Hughes said he wanted to speak under Citizens Forum. Mayor Esteves commented that the Citizens Forum portion of the agenda was handled last night. Assistant City Attorney John Bakker explained that this was a continuation of the previous evening's meeting and satisfied the requirements of the Brown Act.

Acting Planning & Neighborhood Services Director Tambri Heyden reported that two dates were proposed, one in August and one in November, however, the original August date didn't work out; staff was proposing August 2 or August 5, and pointed out that August 5 had just been designated as "National Night Out" in Milpitas; November 17 or 23 were the proposed dates in November. Councilmember Polanski pointed out that August 2 was the Parks, Recreation, and Cultural Resources Commission's regular meeting.

MOTION to set July 29 and November 17, 2004, at 6:30 p.m. as special meeting dates to hold Ethics Code training for the City Council.

M/S: Livengood, Dixon.

Ayes: 5

Isaac Hughes said he wanted to clarify something that he read in some documents and asked when training was scheduled for staff, could the public attend? Mr. Hughes further commented that he found the word "censure" in the training documents, which he thought shouldn't be done to anybody; said if you look at the definition of censure, you will find it also means to censor; and inquired if somebody running for office would have to attend ethics meetings. Mayor Esteves responded staff would get back to Mr. Hughes with answers to his questions.

**5.
Proposed Access Policy**

Assistant City Attorney Bakker reported that this public access policy was requested by Councilmember Gomez, and on March 16, 2004, the Council directed the City Attorney's Office to bring back information on comparative data on other Bay Area jurisdictions, to come up with some hypothetical situations to illustrate potential impacts of the policy, and to draft a model policy based on the proposed policy presented by Councilmember Gomez. Mr. Bakker said he understood that last night the Council went over the various differences between the Public Records Act, the Brown Act, and the proposed Standard Operating Procedure (SOP); and at this time, it would be appropriate to consider adopting or making modifications to the SOP with direction to staff.

Mayor Esteves asked if the Council wanted to have any more discussion, comments, or reflections on the proposed policy.

Councilmember Gomez said he thought the Council discussed this at length, so he wanted to throw out a motion.

MOTION to adopt the policy as drafted by the city Attorney.

M/S: Gomez, Livengood.

Councilmember Livengood asked for clarification of the motion. Councilmember Gomez said the Council had received a policy drafted by the City Attorney. Councilmember Livengood asked if the motion was to approve what Councilmember Gomez originally submitted. Councilmember Gomez responded Councilmember Livengood was correct. Councilmember Polanski said there were still some areas that needed clarification for her; if she had to vote now, it would be against the motion, and said she would like an opportunity to ask questions.

City Manager Wilson presented a recap of the previous night's discussions commenting that Councilmember Gomez made a proposal for the Council's consideration; last night the City Attorney related that document to existing law (the Brown Act and Public Records Act) and highlighted some areas of difference; Councilmember Gomez' motion tonight was to adopt the presentation as submitted by Councilmember Gomez and included these changes that were extensions of existing law.

Councilmember Polanski said her first question was section III-B of the proposed policy, the reference to a ten-day period and inquired if this meant business days or working days, excluding holidays. Assistant City Attorney Bakker responded it would be straight days and could mean up to 24 days, the same as in the Public Records Act. Councilmember Polanski inquired how a copy service would come in to copy records. Mr. Bakker explained from what he had seen, they usually bring in a portable copy machine and set up in the lobby. Councilmember Polanski said she thought the 30 days in III-H-3(e) should be longer and in (f), she thought there should be some type of calendar for the elected officials but didn't believe the City Manager, as an employee, should be included in that part of this procedure; in V-A-2, questioned if 10 years retention for audio/video recordings was in the Public Records Act. Mr. Bakker said he was not aware of any State law as to how long you have to keep video or audio tapes but the City Clerk might know. City Clerk Gail Blalock commented that the City has a resolution requiring audio tapes of Council meetings be kept for two years; however, she thought in absence of that, they could be destroyed after 90 days. Councilmember Polanski said that the cost and feasibility of the proposal were things that also needed to be addressed.

Vice Mayor Dixon said she wouldn't be supporting the motion as presented because if it could be done that quickly, the Council could have stayed and done it last night; she also would have preferred to have taken each item (on the screen) one at a time to bifurcate some of the issues, compromising on some, and in some cases, not at all.

Councilmember Livengood said he would be willing to discuss the items one at a time.

Isaac Hughes said the Council had no excuse to be asking the simplistic questions being asked; the Council should spend some time reading the book "Paper Trails --How to Access Public Records Online and Other Things"; encouraged them to check this book out; he saw a problem with the Council receiving quarterly reports on all public information requests and said he shouldn't see his name in any report when he makes anonymous requests.

Debbie Giordano thanked Councilmember Gomez for bringing this forward; said she sat through two hours of discussion last night and wanted to say she was supportive of this proposal; it creates an avenue for citizens to obtain information about how taxpayers' dollars

are being spent; she thought bottom line, it was an insurance policy for the citizens and encouraged the Council to support it.

Mayor Esteves said he was not going to support the motion for many reasons; he thought the proposal was very haphazardly put together; there was no schedule of definitions of public documents; it did not address what are exceptions; some documents could be confidential or sensitive; and it should be more explicit. Mayor Esteves further stated last night he asked for the fiscal impact and impact on staff and didn't get an answer; it could be a major liability and security issue; nothing was mentioned about implementation; he didn't see any benefit to the public; questioned the need to collect data on requests from the public and how they were responded to; he had not received any information on current damage or if the expected demand justified the cost; and questioned who would even be interested in tapes of Closed Sessions two years later. Mayor Esteves commented that Councilmembers Gomez and Livengood were very firm about this, and he would be interested to see their calendars or the public documents they have kept, as an example, since January this year. Mayor Esteves further commented that as mentioned several times last night, the City has been in compliance with the Public Records Act and the Brown Act; he was not just saying no to this policy but had a better alternative, referring to the "Ten Techniques to Support Open Government" article he mentioned last night, and said he would be coming back with it. Mayor Esteves said if he were to vote for something, he would make sure the taxpayers dollars were well spent.

A man from the audience, who did not give his name, said the Public Records Act guaranteed the right to inspect public records and to obtain a copy during office hours; access may not be denied; the proposed policy did not address denial; and offered a solution stating that the teal building in Sacramento archives parallel files for all cities in the State.

VOTE ON MOTION: Ayes: 2 (Gomez, Livengood) Noes: 3

**6.
Council Handbook**

City Manager Wilson reported this item was also handled by the City Attorney's Office.

Councilmember Gomez said he had a meeting he had to go to and left the dais at 7:38 p.m.

Vice Mayor Dixon said as she stated before, she did have some other issues with the item of public access and wanted to make a statement; as talked about at length last night, this was such a great departure from what the rest of the region does; she could not agree more with Mr. Hughes that there were other things this City could be better at and there was always room for improvement; and agreed that the process of denial should be included. Vice Mayor Dixon shared her personal feeling on open government and said she would like to see the Council's Annual Conflict of Interest Statements made available as soon as possible and available on the City's web site; she would like the City Attorney every year to look at them; and she had no problem at the end of the month taking the calendar the Council receives in their packets and filling in the meetings that aren't already printed and keeping in on file with the City Clerk so any member of the public could look at it. Vice Mayor Dixon expressed concern for taping Closed Sessions because we live in a very litigious society and was concerned that it would also discourage some businesses from doing business in Milpitas because of what could happen; she thought it was anti-business, no business would trust the City in the future; it was anti-employee; and it would discourage employees from filing sexual harassment reports. Vice Mayor Dixon said she appreciated the idea of open government but thought this could have been more clearly defined and if anything were to come back in a more clarified manner as to how the Council can all work as a team to create even more open government, she would be 100 percent supportive.

Mayor Esteves said he would be coming back and proposing a real open government policy for the City.

Handbook Discussion

Assistant City Attorney Bakker reported the City Attorney's Office had provided Councilmembers with a binder of city council handbooks used throughout the area; the documents tended to be lengthy, and staff needed some direction as to what the Council

wanted in a handbook. City Manager Wilson added that these items were voluminous and complex and would take some staff support in assisting the City Attorney's Office and suggested using a Council subcommittee to work on the handbook and report back to the Council.

Vice Mayor Dixon commented that over the years, she had discussed with the City Attorney that Milpitas may be one of the only cities in the region that didn't have a handbook; her intent was to have something that might include a description of the City; a breakdown of the organization; a section on civil rights, violations, protection of employees; information on conflicts of interest; a section dedicated to the Ethics Code and Council behavior; something like the City of Santa Clara "24/7" policy for elected officials that conduct should follow you out into the public; the Fair Political Practices Commission regulations; the Brown Act and any updates. Vice Mayor Dixon further commented that she had written down on five pages areas she would like to see covered such as a glossary of government terms, employee relationships, section on liability, Council relationship with the City Manager and staff, ad hoc and task force committees, preamble of conduct, issues discussed in Closed Session, agendas and process and form of meetings. Vice Mayor Dixon said she thought this would finally tie everything together -- the Ethics Code, conduct of Council, and open government.

Councilmember Polanski said when this was discussed in the City Attorney, she was very impressed with what she saw and thought a Council handbook was a tool that would allow her to better serve the citizens and would also provide information for the citizens. Councilmember Polanski further stated she had prepared a list of items from the samples that she thought should be included, and it should also include some of the policies and procedures approved by the Council over the years to create a consolidated document that would be very useful. Councilmember Polanski agreed that using a subcommittee would be in the Council's best interest if the Council was in agreement to have a Council handbook.

Councilmember Livengood said he thought that over the years things had been run very smoothly but had to admit it was done without a lot of structure; he particularly like this idea of a handbook because it would memorialize procedures; he thought a lot of things were very good and complimented Vice Mayor Dixon for bringing it forward and thought in the long run, this would be very helpful, particularly to people who are new and also for new staff members. Councilmember Livengood said he thought it would be appropriate for the City Attorney Subcommittee to continue, it was a very positive development and appreciated the effort that went into it.

Mayor Esteves said he concurred, he liked to document things, thought it would be a good reference and at the same time give the Council a chance to review and make changes. Mayor Esteves further stated that it was also an aspect of open government, as had been said, and the handbook should contain valuable useful information that will be helpful to staff and Council and also to visitors. Mayor Esteves said he concurred with having this worked on by the City Attorney subcommittee and thanked Vice Mayor Dixon and Councilmember Polanski for their efforts.

MOTION to direct staff to work with the City Attorney Subcommittee to create the first Milpitas City Council Handbook.

M/S: Dixon, Polanski.

Ayes: 4

Absent: 1 (Gomez)

JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. CALL TO ORDER

Mayor Esteves called to order the regular meeting of the Milpitas Redevelopment Agency, meeting jointly with the City Council, at 8:06 p.m.

RA2. ROLL CALL

Present were Mayor Esteves, Vice Mayor Dixon, and Agency/Councilmembers Livengood and Polanski. Agency/Councilmember Gomez was absent.

**RA3.
AGENDA**

MOTION to approve the Agenda as submitted.

M/S: Dixon, Polanski.

Ayes: 4

Absent: 1 (Gomez)

**RA4.
MINUTES**

MOTION to approve the Redevelopment Agency minutes of May 11, 2004, and June 1, 2004, including joint meetings with the City Council, as submitted.

M/S: Dixon, Polanski.

Ayes: 4

Absent: 1 (Gomez)

**RA5.
RDA ADJOURNMENT**

There being no further Redevelopment Agency business, Mayor Esteves adjourned the Redevelopment Agency meeting at 8:07 p.m.

The City Council meeting continued.

NEW BUSINESS

**14.
Proposed Re-Calculated
Building Fee Schedule**

Chief Building Official Edgar Rodriguez reported for the past year, the Building Division had been very actively involved in working on a re-adjusted fee schedule to assure recovery of "costs reasonably borne" as required by the Municipal Code. Mr. Rodriguez, using a PowerPoint presentation, briefed the Council on the purpose, background, and methodology of a proposed re-adjusted fee schedule that would come back to the Council in ordinance format for adoption. Mr. Rodriguez explained that a task force was formed that included representatives from the Home Builders Association, the Chamber of Commerce, a housing developer, local contractors, a high-tech facilities manager, and a construction project manager. Mr. Rodriguez presented graphs showing surveys of fees for surrounding cities for different scenarios, a comparison of existing versus the proposed fees, and pointed out that in some cases the re-adjusted fees would be increased and in other cases decreased.

Mayor Esteves inquired if an increase in revenue was expected. City Manager Wilson responded staff was not expecting revenues to ever exceed the City's cost but was hoping to recover more of our costs. Mayor Esteves inquired how much. Mr. Rodriguez responded a very rough estimate was \$100-150,000 additional per year.

MOTION to direct staff to prepare an ordinance for introduction and adoption of the new re-adjusted fee schedule for the Building Inspection Division.

M/S: Dixon, Livengood.

Councilmember Polanski thanked Mr. Rodriguez for his years of service to the City commenting that he has been an asset, and wished him well on his retirement.

Frank De Smidt, Chamber of Commerce, said he served on the task force along with Norm LaCroix and Beverly Bryant from the Building Association, who both were present earlier. Mr. De Smidt said the Chamber's concern was the increase in small permit fees, which would affect the homeowner and small businesses and encourage some people to not get permits. Mr. De Smidt asked that if the information had been revised since the task force last reviewed it, that it be shared again with the task force for their input stating that the fees had been revised a lot from what he had seen.

VOTE ON MOTION:

Ayes: 4

Absent: 1 (Gomez)

ADJOURNMENT

There being no further City Council business, Mayor Esteves adjourned the City Council meeting at 8:33 p.m.

The foregoing minutes were approved by the City Council as submitted on July 6, 2004.

Gail Blalock, City Clerk

Date

APPROVED MINUTES
CITY OF MILPITAS

Minutes:	Regular Meeting of Milpitas City Council (Including Joint Meeting with Redevelopment Agency)
Date of Meeting:	June 15, 2004
Time of Meeting:	6:00 p.m. (Closed Session) 7:00 p.m. (Regular Session)
Place of Meeting:	City Hall Council Chambers, 455 E. Calaveras Blvd.

ROLL CALL

Mayor Esteves called to order the regular meeting of the Milpitas City Council at 6:00 p.m. Present were Mayor Esteves, Vice Mayor Dixon, and Councilmembers Gomez, Livengood (arrived 6:05 p.m.), and Polanski.

CLOSED SESSION

Mayor Esteves publicly stated the Council would convene in Closed Session to discuss the following two items listed on the agenda:

1. **CONFERENCE WITH LABOR NEGOTIATOR**
(Pursuant to Government Code Section 54957.6)
Agency Negotiator: Thomas J. Wilson, City Manager
Employee Organization: Unrepresented Employees
2. **CONFERENCE WITH LABOR NEGOTIATOR**
(Pursuant to Government Code Section 54957.6)
Agency Negotiator: Eddie Kreisberg
Employee Organization: LIUNA

Mayor Esteves adjourned the meeting to closed session at 6:01 p.m.

The City Council meeting reconvened at 7:00 p.m. with Mayor Esteves presiding and Vice Mayor Dixon and Councilmembers Gomez, Livengood, and Polanski present.

**CLOSED SESSION
ANNOUNCEMENTS**

There were no Closed Session announcements.

PLEDGE

Members of Troop No. 92 led the Council and audience in the Pledge of Allegiance.

MINUTES

MOTION to approve the City Council minutes of May 11, 2004, and June 1, 2004, including joint meetings with the Redevelopment Agency, as submitted.

M/S: Gomez, Polanski.

Ayes: 5

SCHEDULE

City Manager Thomas Wilson noted that the Council had received a modified calendar for June. City Attorney Steve Mattas reported the City Attorney Subcommittee would meet on June 18 at 2:00 p.m.

Councilmember Livengood reported that on June 28, he and two representatives of the Bay Area Water Supply and Conservation Agency Board Members would be meeting with Mayor Newsom in San Francisco to discuss a number of issues coming forward regarding the Hetch-Hetchy.

MOTION to approve the Schedule of Meetings as amended.

M/S: Gomez, Livengood.

Ayes: 5

PRESENTATIONS

Mayor Esteves presented Commendations for outstanding service to the community at the Milpitas Library to retiring Library employees Nancy Rupp, 19 years of service; Martha Kruger, 13 years of service; and Linda Noble, 19 years of service.

Mayor Esteves read a Proclamation recognizing the 2004 Milpitas Relay for Life Event on June 25-26, 2004, marking the Sixth Annual Relay for Life in Milpitas, and presented it to Lorraine Hepworth.

Mayor Esteves read a Proclamation declaring the week of June 20-27, 2004, as Amateur Radio Week and recognizing Amateur Radio Field Day taking place on June 26-27, 2004, and presented it to Bill Dale, representing the Amateur Radio Operators. Mr. Dale presented an update on their activities over the past year.

Mayor Esteves read a Proclamation declaring Thursday, August 5, 2004, as Milpitas Neighborhood Night Out 2004 and presented it to Police Commander Jim Berg.

Mayor Esteves read a Proclamation recognizing St. Joseph Assembly, a 4th degree membership of the Knights of Columbus, for its patriotic activities in conjunction with Flag Day 2004 and providing the American and California flags this year to Sinnott Elementary School in Milpitas. The Proclamation was accepted by Officers of the Knights of Columbus.

Mayor Esteves presented Commendations to 2004 Renaissance Student recipients Ryan Robinson and Veronica Yee; unable to be present were Carlos Correa, Nick Hawley, Jasmyne Jamerson, and Whitney Cole.

Mayor Esteves presented Commendations to the members, parent partners, and sponsors of the Milpitas High School Artificial Intelligence Robotics Club in recognition of the Club's winning the prestigious KPCB (Kleiner Perkins Caufield & Byers) Entrepreneurship Award, the Sacramento Regional Finalist Award (Silver Medal), and the Silicon Valley Regional Judges Award during its second year as a newly organized group. Daniel Chang, Club President, thanked the City for its support over the past two years. Ceal Craig, Industry Lead-Coach, also thanked the Mayor and Council and sponsors for their support.

CITIZENS FORUM

Mayor Esteves invited members of the audience to address the Council on any subject not on the agenda, requesting that remarks, including any visual or technology-assisted presentations of any kind, be limited to two minutes or less, and noted that the City Clerk would be using the timer and when the red light at the podium came on, two minutes would be up.

Julie Cherry, representing the Milpitas Alliance for the Arts, shared copies of "The Art of Creating an Arts Community," a toolkit for building an arts program created by the Alliance through a grant from the Community Foundation Silicon Valley. Ms. Cherry said it was their hope that this toolkit would serve as a resource for other organizations that want to make a positive impact on their community, and she would be happy to meet with the City to discuss a distribution plan for this toolkit if the City was interested in using it to market the City.

Mike Mendizabal, President, Milpitas Kiwanis, thanked the Council for their annual contribution to the Child Spree Program that would take place on August 7, and said he would be contacting Councilmembers to invite them to participate in the event. Mr. Mendizabal also invited everyone to participate in their golf tournament July 24 to raise money for the event.

Mr. Swanson talked about what is happening to the United States' oil supply and expressed support for getting oil from Alaska.

Frank De Smidt, representing the Chamber of Commerce, invited everyone to the Chamber's Mixer at Outback Steakhouse tomorrow and reminded everyone of the Chamber's Installation Banquet and Businessperson of the Year Banquet on Friday night.

Rob Means commented on an article in the BBC addressing the oil supply and the false reserve reports by companies and countries that have oil. Mr. Means said we should start addressing this issue now.

ANNOUNCEMENTS

Councilmember Polanski reported the Parks, Recreation, and Cultural Resources Commission held its meeting on Saturday, June 5, and toured several parks and the Adobe; she attended the MUSD dedication of Phase 2 of their Sports Center fields; attended the Fil-Am Cultural Event on Saturday June 5; attended the Milpitas High School graduation on Saturday and commended the Police Department for its assistance with traffic control; and was unable to attend the Policy Advisory Committee meeting for the VTA because of the Special Council meeting last week.

Vice Mayor Dixon requested staff and legal counsel bring forward as soon as possible an ordinance relating to human habitat of vehicles, including a report from the Police Department, and also requested that staff share with all Commissioners the article in Cisco's IQ magazine about City Hall and technology in the City and the article in the Silicon Valley Business Journal on wireless capabilities in the Police and Fire Departments, which she stated was very good news. Vice Mayor Dixon commented that former City Manager Jim Connolly was seriously ill and wished him and his family well. Vice Mayor Dixon asked that the Council meeting be adjourned in memory and honor of the 40th President of the United States, Ronald Reagan.

Vice Mayor Dixon shared her calendar for the past weeks reporting that on June 3, the Santa Clara County Library Joint Powers Authority passed a balanced budget (on a 5 to 4 vote) and formed a Technology Committee; on June 3, the VTA approved implementation of the second phase of fare increases; on June 4, the Annual VTA/County Board of Supervisors meeting was held. Vice Mayor Dixon said she also attended the sports fields dedication at the high school; attended the Zanker Festival on June 5; attended the Fil-Am Festival on June 5; attended the South Bay Kids Fund Raiser at El Torito June 5; and she and the Mayor attended the MUSD Adult School graduation last week.

Councilmember Gomez said he received a call from a resident of Terrace Gardens regarding weeds west of the facility and asked staff to look into it to see if the weeds need to be abated.

Mayor Esteves congratulated the Swaminarayan Temple at Corning and Abel on its 30th anniversary in Milpitas; congratulated the Vietnamese American Community for celebrating their Armed Forces Day; reported he attended the various graduations in Milpitas from the High School to Cal Hills to the Adult Education graduations; and announced a Health Faire at St. John's Church on Sunday, June 20, 8:30 a.m. to 2:30 p.m. Mayor Esteves informed the public that in honor of former President Reagan, the Governor's Office sent the City pages for residents to sign and write comments and reflections, the pages were available in the City Hall lobby and would become part of the Book of Collections, and encouraged everyone to sign. Mayor Esteves said he would be adjourning the meeting in honor of former President Reagan.

AGENDA

MOTION to approve the agenda as submitted.

M/S: Gomez, Polanski

Ayes: 5

CONSENT CALENDAR

Mayor Esteves inquired if anyone wished to make any changes to the Consent Calendar.

City Manager Wilson reported that the recommendation for item 18 should also include approval of the partial acceptance agreement; it was included in the title but not in the recommendation.

Councilmember Gomez commented that for item 12 (Arts Commission revised work plan), he wanted to make it very clear that like any other commission, the Arts Commission will be responsible, with staff support, for the bulk of the work.

Councilmember Polanski said she was going to remove items 16 and 16A, moving them up, however, she knew there were several major items on the agenda that were unfinished from before, but she did want to highlight that this was something the Parks, Recreation, and Cultural Arts Commission reviewed on June 5, a representative couldn't be there, and because it was such a wonderful event, she wanted to ask the representative from the Bobby Sox to make an announcement about the Tournament of Champions, but she would leave the items on consent.

A woman representing the Bobby Sox thanked the Commission and the Council for approving \$1,000 to offset the costs of hosting the 2004 National Bobby Sox Tournament of Champions on August 7-11, 2004, in Milpitas commenting that 60 teams will be coming to Milpitas, the event has never been out of Southern California before, and invited the Council to come out and support the girls.

MOTION to approve the Consent Calendar, items with asterisks on the agenda, as noted in accordance with the staff recommendations.

M/S: Gomez, Polanski.

Ayes: 5

***9.
Odor Control Plan/Update**

Noted receipt and filed progress report; authorized the City Manager to execute the agreement amendment with CalRecovery Inc., in an amount not to exceed \$24,500.00, subject to approval as to form by the City Attorney.

***10.
Appointments/Reappointments**

Approved the Mayor's appointments and reappointments to the following Commissions:

Bicycle Transportation Advisory Commission

Move Nawal Stanojevic from Alternate 1 to a regular member for a term expiring August 2005; move Miljon Buquing from Alternate 2 to Alternate 1 for a term expiring August 2004; and appoint Kayci Nguyen to Alternate 2 for a term expiring August 2005.

Citizens Emergency Preparedness Advisory Commission

Reappoint Annell Spencer and Teresa Chaves to new three-year terms expiring June 2007.

Library Advisory Commission

Reappoint Marilyn Hay, Diane Davis, Margie Stephens, and Trinidad Aoalin to new two-year terms expiring June 2006.

Parks, Recreation, and Cultural Arts Commission

Reappoint Edward Tuason to a new three-year term expiring June 2007; move Judi Leonard from Alternate 1 to the vacancy created by Neil MacKenzie not seeking reappointment, for a term expiring June 2007; and move Kathryn Gray from Alternate 2 to Alternate 1 for a term expiring June 2005.

Senior Advisory Commission

Confirm the election of Ed Connor and Milo Larsen as Members at Large elected to terms expiring December 2005.

***11.
Proposition 42**

Authorized the Mayor to sign letters of support for ACA 21 (Bogh), ACA 24 (Dutra), ACA 29 (Harman), and SCA 20 (Torlakson).

***12.
Arts Commission Work Plan**

Approved the Arts Commission's revised Work Plan.

***13.
Sister City Visit**

Approved expenses for the Tsukuba City August 2004 cultural exchange from the Council's Community Promotions budget; authorized the City Manager to execute invoices not to exceed \$2,020.

***15.**

Denied the request from Wellspring Community Church based on previous Council direction

Deny Marquee Request	regarding personal marquee requests.
*16. Youth Sports Grant	Approved one Organizational Youth Sports Assistance grant in the amount of \$1,000.00 for the North Valley Milpitas Bobby Sox to offset costs of hosting the 2004 National Bobby Sox Tournament of Champions on August 7-11, 2004, in Milpitas. .
*16A. Fill Vacant Positions	Approved filling the following vacant positions to meet the ongoing service needs of the City (sufficient funds are included in the fiscal year 2004-2005 budget to cover salaries and benefits: Maintenance Worker III; Deputy City Clerk; and Word Processing Operator; and elimination of the Building Division Office Specialist vacancy and replacing it with a Building Permit Technician.
*17. General Municipal Election	Adopted Resolution No. 7423 calling a General Municipal Election on November 2, 2004, and requesting consolidation.
*18. Initial Accept. Partial Accept. Agreement PARC Metro Project No. 3061	Adopted Resolution No. 7424 granting initial acceptance, subject to a one-year warranty Period and reducing the faithful performance bond to \$2,091,260, and approve partial acceptance agreement.
*19. Initial Accept. Veritas Phase I, Project No. 3123	Adopted Resolution No. 7425 granting initial acceptance, subject to a one-year warranty period and reducing the bond to \$64,000.00.
*20. Excess Workers Compensation Insurance	Authorized staff to enter into a contract with Cal-Surance in an amount not to exceed \$229,000; and approved a budget appropriation of \$45,000 from the General Fund Contingency Reserve to cover the insurance increase and for the State's surcharge.
*21. Storm Water Runoff Programming	Authorized the City Manager to amend the agreement with TriAxial Data Systems for programming services related to the tracking of Storm Water Runoff in an amount not to exceed \$10,000; and extended the agreement until June 30, 2005, subject to approval as to form by the City Attorney.
*22. Fire Station Alerting System	Authorized the City Manager to execute an agreement in an amount not to exceed \$45,243.76 for equipment installation with Telecommunications Engineering Associates (TEA), subject to approval as to form by the City Attorney.
*23. Software Support/Maintenance Fees	Authorized the City Manager to approve the payment of the annual software support and maintenance fees to Best Software, Inc., for Recruitment Tracking in the amount of \$1,205.00; Best Software, Inc. for Fixed Asset Tracking in the amount of \$2,810.00; Granicus for Web Streaming in the amount of \$9,000.00; Identix, Inc. for the Livescan Fingerprinting System in the amount of \$5,417.83; Intergraph Corporation for the Geographic Information System in the amount of \$12,296; KIS Computer Center for Cisco Equipment Support in the amount of \$2,626.28; Motorola for the Mugshot Instant Image System in the amount of \$3,071.00; Northrop Grumman for Water Meter Reading Hardware and Software in the amount of \$2,115.96; Peelle Technologies, Inc. for the Document Imaging System in the amount of \$13,191.35; Tiburon , Inc for the Police Records Management System in the amount of \$29,021.00.
*24. Plans & Specs Project No. 4186	Approved plans and specifications and authorized advertising for bid proposals.
*25. Plans & Specs Project No. 4178	Approved plans and specifications and authorized advertising for bid proposals.
*26.	Authorized the City Manager to execute the agreement with Olivia Chen Consultants for the

Consultant Agreement Project No. 7091	preparation of construction plans, specifications, and estimates for the City Reservoir Evaluation and Upgrades project, in a amount not to exceed \$74,400, subject to approval as to form by the City Attorney.
*27. Agreement Amendment No. 12 237/I-880, Project No. 4170	Authorized the City Manager to execute the Agreement Amendment No. 12 with Mark Thomas & Co., Inc., in the amount of \$10,000.00, subject to approval as to form by the City
*28. Agreement Amendment Project No. 4179	Authorized the City Manager to execute the agreement amendment with HMH Incorporated,, in the amount of \$9,600, subject to approval as to form by the City Attorney.
*29. South Bay Water Recycling In-kind Services	Authorized the City Manager to execute the agreement amendment with the City of San Jose, subject to approval as to form by the City Attorney.
*30. Senior Nutrition Program	Approved contract with New Orient Restaurant from July 1, 2004, through June 30, 2005, for the Senior Nutrition Program (total amount of contract is \$24,132, not to exceed \$3.25 per meal) and subject to approval as to form by the City Attorney.
*31. Radio Modems Purchase	Approved the purchase of radio modems needed as part of the new Computer Aid Dispatch (CAD) System project for Police and Fire vehicles in order to communicate with dispatch system, from Verizon Wireless in an amount not to exceed \$29,666.52.
*32. Bid Award Fire Station Alerting Equipment	Awarded the bid for the remote alerting system equipment to Day Wireless Systems, the most responsive bidder, in the amount of \$32,502.00 and authorized the purchase.
*33. Miscellaneous Vendors	Approved the purchase request in the amount of \$10,000.00 to Keyser Marston Associates for consulting services to determine the feasibility of developing an auto mall along the I-880 corridor.

PUBLIC HEARINGS

- 1.
Time Extension
Hillside Home
(Normand LaCroix)**

Acting Planning & Neighborhood Services Director Tambri Heyden presented the request for approval of a one-time 18-month time extension for a hillside single-family home, subject to construction and the numerous conditions that need to be addressed prior to obtaining a building permit, staff and the Planning commission concluded the time extension was justified.

Mayor Esteves opened the public hearing and invited comments.

Norm LaCroix, said he was present to make it clear for the record there may be a possibility that he may not be the builder of this home, noting that he had sent the Council a letter to that effect.

MOTION to close the public hearing.

M/S: Livengood, Polanski. Ayes: 5

MOTION to approve the request for an 18-month time extension (P-TE2004-2) to expire on December 15, 2005, for the Planned Unit Development approval for the single-family home, based on the findings and special conditions contained in the Council's agenda packet.

M/S: Livengood, Polanski. Ayes: 5
- 2.
'S' Zone Approval/Amendment**

Mayor Esteves announced that at the last Council meeting, he abstained on this project because he thought he might have a conflict of interest due to the location of some property

**Density Bonus
Apton Plaza**

he has an interest in; however, after reviewing the matter with staff and legal counsel, he found he did not have a conflict of interest as the property was beyond the 500 ft. restriction, so he would be participating tonight.

Acting Director of Planning & Neighborhood Services Heyden reported the applicant was requesting a continuance of this item to July 6, 2004, in order to allow additional time to review and consider the recommended conditions of approval.

Mayor Esteves opened the public hearing and invited comments. There were none.

MOTION to continue the public hearing to July 6, 2004.

M/S: Dixon, Livengood.

Ayes: 5

**3.
Landscaping & Lighting
Maintenance Assessment
District No. 95-1**

Principal Civil Engineer Mehdi Khaila reported Landscaping and Lighting Maintenance Assessment District No. 95-1 provides for the servicing and maintaining the public landscaping and additional lighting along North McCarthy Boulevard and the Gateway feature on Ranch Drive, the total assessment for the district in the Annual Engineer's Report was \$252,226 for the 2004-2005 fiscal year, and the amount was the same as the 2003-2004 assessment except for the addition of \$12,844 for recently completed landscaping improvements and application of the annual Consumer Price Index escalation factor.

Mayor Esteves opened the public hearing and invited comments.

There were none.

M/S: Dixon, Livengood.

Ayes: 5

MOTION to Adopt Resolution No. 7421 approving Annual Engineer's Report, confirm diagram and assessment and ordering levy of assessments for fiscal year 2004-2005, for Landscaping and Lighting Maintenance Assessment District No. 95-1.

M/S: Dixon, Polanski.

Ayes: 5

**4.
Landscaping & Lighting
Maintenance Assessment
District No. 98-1**

Principal Civil Engineer Mehdi Khaila reported Landscape and Lighting Maintenance Assessment District No. 95-1 provides for the servicing and maintaining the public landscaping and additional lighting along Sinclair Frontage Road, Los Coches Creek and Berryessa Creek abutting the Sinclair Horizon residential subdivision, the total assessment for the district in the Annual Engineer's Report was \$31,769.64 for the 2004-2005 fiscal year, and the amount was the same as the 2003-2004 assessment except for application of the annual Consumer Price Index escalation factor.

Mayor Esteves opened the public hearing and invited comments.

There were none.

M/S: Dixon, Livengood.

Ayes: 5

MOTION to Adopt Resolution No. 7422 approving Annual Engineer's Report, confirm diagram and assessment and ordering levy of assessments for fiscal year 2004-2005, for Landscaping and Lighting Maintenance Assessment District No. 98-1.

M/S: Dixon, Polanski.

Ayes: 5

UNFINISHED BUSINESS

**5.
Proposed Procedure/Protocol**

City Attorney Steve Mattas reported a request by Councilmember Gomez was brought to the Council on March 16, 2004, for consideration of adopting a Statement of Policy and General

For Public Records Access & Public Meetings

rules to guide in the development of a protocol for public access to meetings and for the disclosure of public records; the Council directed the City Attorney to collect and assemble comparative data on other Bay Area jurisdictions that have adopted similar policies or ordinances, to come up with some hypothetical situations to illustrate what impacts the policy might have on the City and the Council's deliberative process, and to draft a model policy based on Councilmember Gomez's proposed Statement of Policy and General Rules. Mr. Mattas described the documents included in the Council's agenda packets and commented that the proposed Standard Operating Procedure (SOP) in general included many of the provisions of the Public Record Act and the Brown Act; provisions that differed included requiring the City Clerk to submit quarterly reports on all requests for public information, preliminary drafts must be retained, appraisals would become public after 30 days, and the Council and the City Manager would be required to keep a daily calendar recording each meeting or event attended relating to official City business. Mr. Mattas also said the SOP reduced the current photocopy cost from 20 cents to 10 cents per page. Mr. Mattas further described the differences in the SOP from the Brown Act that included the mandatory use of the "safe Harbor" provisions for Closed Session items, noting that this was already being done, and required audio or video recordings of all Closed Sessions and established criteria for inspection of the tapes. Mr. Mattas reviewed the recommendation to consider the information provided and adopt or modify the proposed Standard Operating Procedure.

Councilmember Gomez said an item missing had to do with mailing of agendas for individuals who request them and asked why it wasn't included. Mr. Mattas responded it must have been an oversight. Councilmember Gomez said another item was an opportunity for the public to speak on every agenda item. City Attorney Mattas responded the Brown Act already allowed that. Councilmember Gomez asked for confirmation that the weekly report was a public record. Mr. Mattas responded yes. Councilmember Gomez expressed his support for the proposed policy, he was comfortable with it; he thought this policy would make Milpitas a leader in the community in terms of open government; and stated that the public's right to know was fundamental and as long as those items were put back in, he would support it and would like to hear from his colleagues.

Councilmember Livengood said he thought the provision relative to Councilmembers' calendars and the public knowing who Councilmembers are meeting with and the topic of discussion was good and inquired how that was to happen. City Attorney Mattas said the protocol made it the obligation of the Council and City Manager to maintain that but doesn't specify the format and the Council would want to provide direction as to how that information would be turned in. Councilmember Livengood suggested having something interactive on-line (the City's web site) that only the Council could get into to change (their own calendars) so that everybody could have access to the calendars. Director of Information Services Bill Marion responded that the current system wouldn't allow that; however, staff could look at it. City Attorney Mattas suggested the Council may want to consider implementation as part of the handbook; if adopted, the procedural steps could be included in a Council handbook (next item of discussion). Councilmember Livengood said publishing the Council's calendars was very important but timing was also very critical, and he liked the idea of having a real-time calendar.

Councilmember Livengood said one of the concerns he had with property negotiations was that it seemed to him too many issues were being resolved and talked about in Closed Session when it related to the City buying property and were being completed before the public has a chance to hear the details and suggested including the property street address instead of the Assessor's Parcel Number on the agenda. Councilmember Livengood asked how could the Council get better at giving the public an earlier view of what the Council was going to talk about but at the same time not harming the City's ability to acquire the property. City Attorney Mattas explained how the "safe harbors" were used on the Closed Session agenda but the Council could require that the street address be used, to the extent the property has a street address. Mr. Mattas responded to the issue of confidentiality in property negotiations by sharing an actual situation resulting in unintended consequences that happened in another city,

and said if the Council wanted earlier notification, it could direct that through some type of posting process.

Mayor Esteves asked about the potential liability or loss to the City, the fiscal impact, and for an explanation of the mechanics of implementation and the impact on operations, requesting that each item be taken one at a time so everyone would have a clear understanding.

Mr. Mattas described the proposal for the Council receiving quarterly reports on public information requests commenting that the information would be generated out of the City Clerk's Office; in surveying 28 other cities, this was not a common report but was a requirement in communities with sunshine ordinances; and for financial information, he would have to report back on that. Mayor Esteves said the criteria for that should be clear along with a definition of what should be included in the report.

Councilmember Polanski said her understanding of this quarterly report was relative to the issue we have now where there was a public information request to see all of her emails; she asked if a request for a copy of the City directory by a commissioner was considered a public request that would go on this quarterly report. City Attorney Mattas responded in effect, because a commissioner is considered part of the City organization, in that context the commissioner would be asking for information that is generally available for commissioners and such a request would not be included in the report. Councilmember Polanski said she thought there was a certain procedure or policy if someone wanted to receive public information and the quarterly report was going to be on those items; she thought it would be more specific on how you request public records. City Attorney Mattas explained that if someone made a verbal request and staff dealt with it, that wouldn't be included on the quarterly report. Councilmember Polanski said she didn't want to overburden an already impacted department and was getting confused.

Mr. Mattas said requests for documents that come in from the greater City organization were not public records requests; public records requests that would be covered by this policy would really relate to outside requests.

Mayor Esteves said the bottom line was still that the guidelines should be written down as to what is a public records request and asked if the report was on statistic or copies of the requests or records or what. Mr. Mattas responded you would get a listing of the requests and how they were responded to. Mayor Esteves said that should be defined in the report.

Councilmember Livengood said he was not a bit confused by any of this commenting that he knew what a freedom of information request was, he knew what a public records request was, he knew what Councilmember Gomez had asked for; and commented that gets volumes of reports from staff, including a report on who rents the Community Center, and he thought if they have time to do that, they have time to put together a report on public information requests; he was not a bit worried about staff time on this and he understood it completely.

Councilmember Polanski said she understood what public information requests were as well and had no problem if the purpose was, as Councilmember Livengood said, to hold staff accountable on the timeliness of responses to requests but that was never explained or understood; she had no problem understanding what is a public record is, what our actual liability is and our requirements as Councilmembers when we have a conflict of interest; and the report Councilmember Livengood brought up was sent by email information for the Council to make them aware of what is happening in the City; and if this report was to show timeliness and accountability of requests, she understood that.

Councilmember Gomez said his purpose was for accountability for everybody to know and for the public to know what types of information available, how long it takes to respond, and what kind of problems citizens might have because he wouldn't know until this information is compiled.

Mayor Esteves commented this is basic information but like everything else, he preferred a definition because it could be interpreted in various ways. City Attorney Mattas responded that this type of report and what constitutes a public record – the policy spoke to providing the public records but the actual definition was in the Public Records Act that you are required to comply with under State law. Mayor Esteves commented that all the departments exposed to this would need to understand what was a public record.

Mayor Esteves moved on to the second item, disclosure of preliminary draft documents. Mr. Mattas said draft documents covered all issues relative to contracts, drawings, preliminary drafts that would have to be kept in the ordinary course of business, the standard was very similar under the Public Records Act, and the volume of documents to be maintained would be greater than now. Mayor Esteves inquired how many draft documents. Mr. Mattas responded it would depend on what you would keep in the ordinary course of business.

Councilmember Livengood commented that one of the types of documents was a handwritten document that typically is part of a meeting and inquired what was the policy as it related to handwritten notes at staff meetings. Mr. Mattas responded it would become a public record if you keep them. Councilmember Livengood said he thought that was a good thing to do.

Councilmember Polanski, referring to number 4 on page 8, said she didn't have a problem with that but did have a problem giving out a draft document, especially if there was a change, and asked how would you insure that it was a draft or prevent someone from using the draft as if it was what happened when it may not have been. Mr. Mattas responded that may require something in terms of identification as being a draft. Councilmember Polanski expressed further concern for draft minutes. Mr. Mattas responded it would be difficult to control but you could denote each page as a draft or superimpose "draft" on the document.

Councilmember Polanski asked what the purpose was of insuring that these draft minutes get out. Councilmember Gomez responded for the public to know sooner rather than later what goes on in these commission meetings.

Mayor Esteves expressed concern for the cost of storing and keeping draft documents, said he would like a staff opinion on this because they will be doing the job, and wanted to know the cost.

Councilmember Gomez said the key words were kept under the ordinary course of business because he didn't want to increase staff workload or start keeping anything new.

Mayor Esteves moved on to item 3, disclosure of real property documents, including appraisals.

Vice Mayor Dixon said she had misgivings about real estate negotiations because it could in the future cut out the City's ability to enter into an agreement to purchase property because the other party might not want information disclosed. Vice Mayor Dixon further stated she thought the Council should be aware of this and take this into consideration because this goes well beyond just the Council tonight; expressed concern for handicapping future councils; and she had a problem with 30 days and thought it didn't seem appropriate.

Councilmember Gomez said the whole idea behind this was if there was nothing that requires a record to be exempt, it should be public and he just picked 30 days; it was important to him that at some point in time those records become public.

Councilmember Polanski said she had no difficulty with recording Closed Sessions but did have difficulty when it comes to land acquisition and personnel matters; she expressed concern for the rights of citizens and employees and some businesses that need to be protected, and she wanted to be open but didn't want to go overboard so no one would want to do business with the City or work in the City and didn't want to harm those that we may not be thinking about.

City Attorney Mattas commented that if the Council believed a longer period of time to address some of the concerns was needed, it could be done and with respect to release of information, the Council may want to have included in the policy the disclosure of that policy when you commence negotiations so people would understand the risks.

Mayor Esteves moved on to item 4, the City Council and City Manager to maintain and preserve all documents and correspondence, including emails and draft memos.

City Attorney Mattas said the policy was broadly worded and the Council would be in the best position to know the volume of documents they have and what it would take to maintain those documents. Mr. Mattas further stated that most documents that come to the Council probably goes to all the Council and so the Council may want to consider maintaining a central repository of the documents received.

Councilmember Polanski said most everything she receives comes out of some department and asked how do we define this. Mr. Mattas said because of the broad manner in which it was worded, the Council may want to ask Councilmember Gomez his intent and encouraged the Council to consider a central repository and some guidelines how long it would be kept.

Councilmember Gomez said the idea was for the public to know what we are receiving and for the Council to narrowly define what we are keeping, what we are not going to keep, and what is available to the public.

Councilmember Livengood said he envisioned that anything that comes out of the City to all Councilmembers wouldn't need to be saved because the public would have access to that already; what he saw as important was correspondence, letters, or emails that come to individual Councilmembers and relates to City issues; that was the kind of documents the Council should be saving, and he had never found it to be burdensome and felt part of his responsibility as an elected official was to keep documents that relate to his work as a Councilmember.

City Attorney Mattas said it would be important for staff to understand how long you would want those documents maintained in a central repository.

Vice Mayor cited an example of the Council recently receiving several hundred letters from members of a Korean Church and inquired if the Council should keep those and commented that sometimes when there is too broad an interpretation, it leaves room for abuse. Vice Mayor Dixon suggested having the Executive Secretary open up all Council mail and put a copy in one place, unless it is marked confidential. City Attorney Mattas suggested if the Council decided to have a repository, to get a report back. Vice Mayor Dixon expressed concern that it was too broad, she wished it was done up in categories, it should be more clearly defined, and as far as keeping things in a professional businesslike manner, she had no problem with that and whatever she gets, she was more than glad to share with the public.

Mayor Esteves said he valued his time and would rather serve the public than do clerical work; to date he hadn't seen any strong public benefit or heard from anybody what would happen if this wasn't done; it looked like a burden was being placed on something that was being done anyway and everybody knows we are in compliance with the Public Records Act and the Brown Act; and if something was to be implemented, it should be well defined so there won't be room for abuse.

Mayor Esteves moved on to number 5, the City Council and City Manager keep or cause to be kept a calendar showing time and place of meetings or events that relate to City business, including persons attending and a brief general statement of issues discussed; the calendars would be public records. Mayor Esteves asked how detailed would the reports need to be.

Councilmember Gomez said a brief general statement of who they met with and what was discussed to give the public a general idea of what we are doing and who we are meeting with.

Councilmember Livengood said this was one of the most important elements of this proposal, and he thought that the suggestion he made earlier of how to make this a real-time document that can be updated easily – was also important.

Mayor Esteves pointed out that there already is the Schedule of Meetings with each agenda packet that is open to the public, so the Council has already been doing that.

Councilmember Polanski said she had no problem submitting a calendar, she uses the one in the agenda packet, and it also lets the public know when she may or may not be at home, which makes some people more vulnerable. Councilmember Polanski further stated when the Council started discussing this, Councilmember Livengood said it should be real time if dealing with City business; she disagreed because if she is going to be meeting with people or away from her home, she didn't want the City of Milpitas to know that; she has a full time job and this job, and she didn't meet with people on short notice. Councilmember Polanski said she had no problem providing a calendar to the public but would prefer to report on what she had done in the past two weeks. Councilmember Polanski questioned if this calendar was for the good of the citizens or for political reasons; she believed if you are circumventing the system now, you will still continue to do so and this policy will not change that. Councilmember Polanski shared a cartoon (*Get Fuzzy* by Darby Conley) from the San Francisco Chronicle on open government and stated that she wasn't going to jeopardize herself personally by disclosing things that could harm her.

Vice Mayor Dixon commented that most of the cities in the survey didn't do this and expressed concerns for liability and the anti-business or anti-employee consequences. Vice Mayor Dixon said that Councilmember Livengood said he thought the most important thing was to make the Council's calendars open and accessible; she thought there were many other areas of greater concern such as publicly disclosing the fact that you have been a consultant since January 2003 for KB, which was one of the major players who ultimately succeeded in the purchase of the County Elmwood property; that was important to her and she thought important to the public; and felt the issue was not clearly defined. Vice Mayor Dixon also said she announces at every Council meeting events she has gone to where she represented the City and uses the City calendar at home; she wouldn't mind, if it makes it easier for the public, at the end of the month to take this calendar and plug in every event she attended and the time expended; however, she would like more defined guidelines and then would comply to the best of her ability.

Mayor Esteves said he thought all the Council was for open government but asked what form should it take. The Mayor read from an article from City Forum Magazine on the "Top 10 Techniques to Support Open Government." Mayor Esteves said he thought useful good information was the key and if this is mandated, the Council should allocate the resources as well.

City Attorney Mattas reported that the current copy fee was 20 cents per page and the proposal Gomez lower the cost to 10 cents per page. Councilmember Gomez asked the City Attorney to get back to him where he wrote 10 cents in his proposal.

City Attorney Mattas commented on the Brown Act stating that the "safe harbor" provisions for Closed Session were already followed by the City Clerk; audio or video recording of Closed Session went beyond the Brown Act requirements and was part of this proposal.

Councilmember Gomez said his purpose was there comes a time when there is no longer a rationale for keeping them closed; if there was no longer a rationale, he wanted to make them public.

Mayor Esteves asked for confirmation there wouldn't be one standard date when Closed Session information could be disclosed so Mr. Mattas was saying it would be dependent on the issue. City Attorney Mattas responded the policy before the Council established dates certain for events when the information could become public. Vice Mayor Dixon expressed concern that this might be used as a vehicle to create something that doesn't exist and could also discourage some types of complaints such as sexual harassment or sexual abuse reporting. Vice Mayor Dixon pointed out that in the survey, Berkeley was the only city that keeps minutes and videotapes but only for review by attendees and she had no problem with that. Vice Mayor Dixon commented on potential liability, concern for future taxpayers, and protecting employees. Vice Mayor Dixon said if she were to agree to anything, it would be to have Closed Sessions audio taped, keep the tapes for two years, and add to the record the attendance and the time they join the Closed Session.

Councilmember Polanski said she agreed with that, especially on the archiving of the tapes for two years, thought it would be more beneficial for the Council and staff to be reminded of what happened, she didn't see the purpose in making the tapes public, and she agreed with Vice Mayor Dixon's comments.

City Attorney Mattas asked for clarification from Councilmember Polanski and Vice Mayor Dixon that their intent was tapes would be kept for two years and would be available to all attendees or just the Council. Vice Mayor Dixon responded she would say attendees.

RECESS

Mayor Esteves recessed the City Council meeting at 10:54 p.m. The City Council meeting reconvened at 11:05 p.m.

Councilmember Polanski commented that there were a number of items left on the agenda, it was 11:00 p.m., and it was difficult to make rational decisions when tired and at a late hour and suggested continuing the meeting to a date certain.

MOTION to continue the meeting to 7:00 p.m. Wednesday, June 16, 2004.

M/S: Polanski, Dixon.

City Attorney Mattas asked the Council to indulge him a few minutes while he checked into continuing the meeting.

7. Equity Adjustment Unrepresented Employees

City Manager Wilson reported this item, to consider salary adjustments for unrepresented employees, followed direction from the Council at the May 11, 2004, Budget Hearing; the recommendation from the City Manager was the same as was presented at the budget meeting for approval of a 4.6 percent salary adjustment beginning the first full pay period in July.

MOTION to adopt a 4.6 percent equity adjustment for unrepresented employees.

M/S: Dixon, Livengood.

Mayor Esteves said he would like to make an amendment to the motion that the information he requested on salary comparisons be provided. City Manager Wilson responded that could be done but asked if staff could have until Tuesday next week.

Vice Mayor Dixon, the maker of the motion agreed, agreed and asked that the comparative analysis be ready for the public and the media next Tuesday.

VOTE ON MOTION:

Ayes: 5

ADJOURNMENT

City Attorney Mattas reported that the Council could adjourn to Wednesday evening (less than 24 hours) since all five members were present.

MOTION to adjourn to 7:00 p.m., Wednesday, June 16, 2004, in the Council Chambers to

continue with the remainder of the agenda.

M/S: Polanski, Livengood.

Ayes: 5

Mayor Esteves adjourned the meeting at 11:13 p.m. to 7:00 p.m., Wednesday, June 16, 2004, in the Council Chambers, in honor and memory of the 40th President of the United States Ronald Wilson Reagan.

Gail Blalock
City Clerk

The foregoing minutes were approved by the City Council as submitted on July 6, 2004.

Gail Blalock, City Clerk

Date

APPROVED MINUTES
CITY OF MILPITAS

Minutes:	Special Meeting of Milpitas City Council
Date of Meeting:	June 10, 2004
Time of Meeting:	5:00 p.m. (Closed Session)
Place of Meeting:	City Hall Council Chambers, 455 E. Calaveras Blvd.

ROLL CALL

Mayor Esteves called to order the Special Meeting of the Milpitas City Council at 5:00 p.m. Present were Mayor Esteves, Vice Mayor Dixon, and Councilmembers Gomez and Polanski. Councilmember Livengood was absent.

**REMEMBRANCE OF
FORMER U.S. PRESIDENT
RONALD WILSON REAGAN**

Mayor Esteves stated that he called this Special Meeting of the Milpitas City Council to consider an appropriate recognition in the City of Milpitas of former United States President Ronald Wilson Reagan and to consider options for observing a National Day of Mourning on Friday, June 11, 2004.

Assistant City Manager Blair King reported staff had received a memorandum from the City Attorney and the City Manager indicating that the President and the Governor of California have declared tomorrow to be a National Day of Mourning for former United States President Ronald Reagan and some cities in California have determined that facilities should be closed for the Day of Mourning (tomorrow); research in terms of the City's Memorandums of Understanding indicated that the Council, if they chose, could declare that City facilities be closed but only the City Council could take that action and that was why the Mayor called this special meeting. Mr. King further reported that options the Council might consider, in addition to closing, would be to adopt a resolution expressing sympathy and condolences to the Reagan family without closing facilities or a resolution expressing condolences and encouraging employees to take 15 minutes to stand down from their work to remember the former President in a manner of their own choosing; and staff had prepared three different resolutions, depending on the action the Council chose to take. Mr. King said should the Council choose to close, staff had prepared a closure plan to notify employees and the public that City facilities would be closed tomorrow.

Mayor Esteves asked for comments from the Council.

Vice Mayor Dixon commented on an article in the San Jose Mercury News today listing closures that included Federal offices; however, most counties (including Santa Clara County), cities, libraries, and schools would remain open along with banks and most businesses and all transportation would be on regular schedules. Vice Mayor Dixon further commented that because the coverage has been ongoing during the entire week, most everybody has had the opportunity to view part of the ceremonies; tomorrow the coverage would begin at 6:00 a.m. and it should be over by 2:00 p.m. Vice Mayor Dixon said she thought standing down for 15 minutes didn't seem to fit the bill but felt a resolution of sympathy and condolences as proposed was appropriate and suggested setting up the Committee Room with a cable connection so that if employees wanted to go down and watch any of the speeches, they could instead of having a time restraint; she also recommended putting out a book for comments, like some other cities were doing, that would eventually be sent to the State of California Book of Condolences.

Mayor Esteves read from a letter he had received from Governor Schwarzenegger encouraging cities to participate in the collection of comments (through June 18) on special sheets of paper, along with an explanation sheet, provided by the Governor's Office. The Mayor suggested placing the sheets in the lobby, along with the instructions, for people to sign and the sheets would then be sent on to be bound and given to the Reagan Library.

Councilmember Polanski said she agreed the City needed to extend its condolences to the Reagan family and thought some of the suggestion made by Vice Mayor Dixon were good. Councilmember Polanski further stated she was not in favor of closing City facilities and

would feel much differently if a President in office died; she would be working tomorrow and not able to watch it live and would be taping it to view later because it was historical; she believed many cities will be working, as will many Milpitas residents, and expressed concern that it would be such late notice; and she thought having the large screen with live TV coverage in the Committee Room was an excellent way for employees to observe or have a moment of silence to remember the contributions of former President Reagan.

Councilmember Gomez said he concurred with his colleagues on the whole holiday issue and didn't know if it was the most meaningful way to honor former President Reagan by having a day off; he thought having a book as Vice Mayor Dixon suggested and bringing the community into the process to share thoughts and reflections and offering that to the family as a gift was more meaningful; and he did have concerns about a holiday because it hadn't been advertised and people would be expecting to be able to do business.

Mayor Esteves commented that residents would be planning to come to City Hall tomorrow to do business and he thought the suggestion made was a very dignified way to observe a National Day of Mourning for President Reagan by consciously being aware of the loss of a great President; in addition, Mayor Esteves commented that the entire court system would be open.

Assistant City Manager King passed out copies of a draft resolution.

MOTION to adopt Resolution No. 7420 declaring sympathy and condolences in memory of former United States President and former California Governor Ronald Wilson Reagan and honoring a Day of Mourning in the City of Milpitas; and directed staff to put together a Memory Book to be placed in the lobby for the public to come in and make comments and to set up the Committee Room to show the live television coverage starting at 6:00 a.m. Friday, June 11, 2004.

M/S: Dixon, Polanski.

Ayes: 4

Absent: 1 (Livengood)

ADJOURNMENT

There being no further Council business, Mayor Esteves adjourned the Special City Council meeting at 5:14 p.m.

Gail Blalock, CMC
City Clerk

The foregoing minutes were approved by the City Council as submitted on July 6, 2004.

Gail Blalock, City Clerk

Date

APPROVED MINUTES
CITY OF MILPITAS

Minutes:	Regular Meeting of Milpitas City Council (Including Joint Meeting with Redevelopment Agency)
Date of Meeting:	June 1, 2004
Time of Meeting:	6:00 p.m. (Closed Session) 7:00 p.m. (Regular Session)
Place of Meeting:	City Hall Council Chambers, 455 E. Calaveras Blvd.

ROLL CALL

Mayor Esteves called to order the regular meeting of the Milpitas City Council at 6:00 p.m. Present were Mayor Esteves, Vice Mayor Dixon, and Councilmembers Gomez, Livengood (arrived 6:07 p.m.), and Polanski.

CLOSED SESSION

Mayor Esteves publicly stated the Council would convene in Closed Session to discuss the following items listed on the agenda:

1. CONFERENCE WITH REAL PROPERTY NEGOTIATOR

(Pursuant to Government Code Section 54956.8)

Property: APN #022-08-042

Negotiating Parties: City of Milpitas and County of Santa Clara

Agency Negotiator: Thomas J. Wilson

Under Negotiation: Terms and Conditions for Disposition or Lease

2. CONFERENCE WITH REAL PROPERTY NEGOTIATOR

(Pursuant to Government Code Section 54956.8)

Property: Vacant Property N. Main Street (APN No. 2208003)

Negotiating Parties: City of Milpitas/Milpitas Redevelopment Agency and Kathleen Cardoza

Agency Negotiators: Thomas J. Wilson and Blair King

Under Negotiation: Terms and conditions for acquisition of property

3. CONFERENCE WITH REAL PROPERTY NEGOTIATOR

(Pursuant to Government Code Section 54956.8)

Property: 163 North Main Street, APN #022-08-041

Negotiating Parties: Mid-Peninsula Housing Coalition, a California

Non-Profit Public Benefit Corporation, City of Milpitas, and Milpitas Redevelopment Agency

Agency Negotiators: Thomas J. Wilson and Blair King

Under Negotiation: Terms and conditions for disposition or lease

4. CONFERENCE WITH REAL PROPERTY NEGOTIATOR

(Pursuant to Government Code Section 54956.8)

Property: 120-150 Winsor Street and 116-130 N. Main Street

Negotiating Parties: Milpitas Redevelopment Agency and Dorothy A. & Ruth A. Winsor

Agency Negotiators: Thomas J. Wilson and Blair King

Under Negotiation: Terms and conditions for acquisition of property

Councilmember Livengood abstained from the discussion of items 1-4 above.

5. PUBLIC EMPLOYEE PERFORMANCE EVALUATION

(Pursuant to Government Code Section 54957)

Titles: City Attorney and City Manager

Mayor Esteves adjourned the meeting to closed session at 6:02 p.m.

The City Council meeting reconvened at 7:00 p.m. with Mayor Esteves presiding and Vice Mayor Dixon and Councilmembers Gomez, Livengood, and Polanski present.

**CLOSED SESSION
ANNOUNCEMENTS**

City Attorney Steve Mattas announced the Council in Closed Session provided direction to the City Manager and City Attorney to come back in July with evaluation process material for Council consideration in open session.

PLEDGE

Members of Troop No. 92 led the Council and audience in the Pledge of Allegiance.

MINUTES

MOTION to approve the City Council minutes of May 18, 2004, including joint meeting with the Redevelopment Agency, as submitted.

M/S: Gomez, Polanski.

Ayes: 5

SCHEDULE

Councilmember Polanski reported the Parks, Recreation, and Cultural Resources Commission meeting schedule would not be held on Monday, June 7, but rather this Saturday, June 5, at 9:00 a.m. beginning at the Community Center and leaving for the Commission's annual tour of park sites.

MOTION to approve the Schedule of Meetings as amended.

M/S: Gomez, Livengood.

Ayes: 5

PRESENTATIONS

Mayor Esteves read a proclamation declaring June 5-12, 2004, as "Affordable Housing Week" and presented it to the City's Principal Housing Planner Felix Reliford.

Mayor Esteves presented Commendations to the following students recognizing them for being selected as a 2004 Renaissance Student and for demonstrating a well-balanced record of accomplishments in academics, arts, physical endeavors, peer leadership, healthy lifestyle, and community service: Erinn Kim; Kevin Lai; Amrit Dosanjh; Anne Villaruz; Sang Nguyen, Billy Boulett, Rachel Purification, Lina Woldeyes, and Carlos Correa. Unable to be present were Brittany Kessinger; Nick Hawley, Veronica Yee, and Ryan Robinson.

Mayor Esteves announced that he had a Commendation for Whitney Cole, recognizing her as a recipient of the Charles Murray Community Leadership Scholarship, but unfortunately Whitney could not be present due to a family emergency.

Mayor Esteves announced he had a Commendation for Jasmyne Jamerson, recipient of the girls for a Change Leadership Scholarship Travel Award but Ms. Jamerson was not present.

Mayor Esteves presented a Commendation to Eric Jackson recognizing him as recipient of the Smart Lifestyle Student Scholarship sponsored by the Santa Clara County APPN Northeast Region Workgroup.

Mayor Esteves announced he had Certificates of Appreciation for the food Donors for the April Joint City/School District Evacuation and Mass Feeding Exercise at Rose Elementary School and because of the large number of donors, asked that representatives stand at their seat for recognition while the names were displayed on the large screen behind the Council.

Vice Mayor Dixon commented that this was the ninth year for this program, when it first started out, it was difficult to get the free lunches for the children but over the years it had become such a natural process working with the various restaurants in the City. Vice Mayor Dixon expressed appreciation to all the restaurants for participating with the City and the School District.

Mayor Esteves asked Arsenio Iloreto, Chair of the Community Advisory Commission, to join him at the podium to assist with presenting Certificates of Appreciation to the Ethics Code participants. Mayor Esteves said the City Council was recognizing the contributions of over 100 Milpitas residents, elected and appointed officials, and City staff who helped develop an ethics code to guide officials and candidates for public office on ethical issues. Mayor Esteves

further stated that because of the large number of participants, he would not read all the names but they were being displayed on the screen behind him. Mr. Ilorito assisted the Mayor by reading the names of those participants who were present in the audience.

RECESS

Mayor Esteves recessed the City Council meeting at 7:27 p.m. for photos. The City Council meeting reconvened at 7:37 p.m.

CITIZENS FORUM

Mayor Esteves invited members of the audience to address the Council on any subject not on the agenda, requesting that remarks, including any visual or technology-assisted presentations of any kind, be limited to two minutes or less, and noted that the City Clerk would be using the timer and when the red light at the podium came on, two minutes would be up.

Chuck Hessinger, representing the North Valley Bobby Sox, announced that the Bobby Sox Nationals would be held in Milpitas August 7-11, 2004, this was the first time they have been held anywhere but Los Angeles in 40 years, 52 teams would be participating, and thanked the City for its support. Vice Mayor Dixon commented that not only was this the first time ever coming to Northern California, but Milpitas will be showcased as a City with ESPN and other news media, the Sheraton Hotel will be the host hotel, and every hotel in town will benefit.

Satnam Chatal, member of the Sister Cities Commission, said he wanted to introduce Professor Singh, the author of 12 books and community leader in his community, and invited everyone to their event at the Community Center on August 8.

Amarjit Singh Dardi, President, Punjabi Society of California, a Punjabi Writers Association based in Milpitas, announced their Punjabi Sahit Sabha Literary Function on August 8, 2004, from 8:00 a.m. to 9:00 p.m. at the Community Center, with people coming from India and other countries, and encouraged the Council to join them. Mr. Dardi also asked that their requested for the auditorium rental fees to be waived be approved.

Gaye Morando, Chamber of Commerce, announced Diane McDonough was named the 2004 Businessperson of the year and she will also be installed President for the 2004/05 year at the annual installation of officers on June 18, (6:30 p.m. reception and 7:00 p.m. dinner) at the Embassy Suites Hotel. Ms. Morando commented that Diane is the 18th Businessperson of the Year and the sixth woman, and invited everyone to come (tickets are available through the Chamber for \$35, the event will incorporate the City's 50th Anniversary theme to also celebrate the City).

Dan Wolterding, 22-year resident and past CAC member, expressed concern for the illegal use of fireworks at Gill Park and the Hetch-Hetchy path near his home and the need for a small Claims Court in Milpitas. Mr. Wolterding said that his concern for illegal fireworks stemmed from his having a shake roof on his house every 4th of July starting at 2:00 p.m. the fireworks start. Mr. Wolterding showed evidence of the fireworks he picked up from the Hetch-Hetchy path last year and also gave the Council photographs he took. Mr. Wolterding said a few of the fireworks were imported and distributed by Golden Gate Fireworks of San Francisco, he had a copy of their catalog, and he was concerned for the welfare of his property as well as those of his neighbors. Mayor Esteves said the Police would be alerted. City Manager Thomas Wilson added that staff would be working to enforce the law and suggested Mr. Wolterding talk with the Fire Chief, who was at the back of the room.

Ed Connor said he was back from his trip to Egypt, described a new library he visited in Alexandria, and said he had something in writing that he would be presenting as we get more into the new library.

Mr. Swanson said he wanted to deliver a message of hope and inspiration and try to give a solid footing for that hope and inspiration; America wants to teach our children to love the number system but we have been unable to bring the expanse that is brought about by the place value system, and he thought the answers were in a device called an odometer.

Isaac Hughes said he had done some extensive on looking at the opportunity that has been presented to the City and the way it had been presented; he researched Dr. Shanks and found some things he agreed with and other things he did not; he didn't agree with censuring people and had yet to see a definition on how the Council plans to censure anybody; condemnation was also suggested and he couldn't find that word anywhere but in the Bible and asked that it also be addressed tonight; and expressed concern that students were being taught to influence the thinking and the voters of elected officials and people were being trained to change the culture yet promote a new positive culture and he thought this culture was fine and did not need to be changed.

ANNOUNCEMENTS

Vice Mayor Dixon reported on meetings relative to transportation that she had attended over the past 10 days including the VTA Finance Administration Committee meeting (a recommendation to the full Board on a fare increase, approval of the audit, and recommendation that all cities be asked to adopt resolutions protecting Proposition 42 funds); Friday she would be meeting with Morgan Hill and Gilroy to continue to try to find common ground on transportation issues; two weeks ago she had the opportunity to host a preview Tasman Light rail trip and June 23 at 11:30 a.m. will be the Grand Opening; and last week at the BART Policy Advisory Board meeting, the latest update on the 15 BART stations was presented and of the three proposals for Dixon, the VTA has moved to options 2 and backed away from the aerial. Vice Mayor Dixon further reported that at the Chamber Board meeting, the slate of officers that will be installed was announced; at the recent City/School Communications meeting, she and the Mayor assessed this year's DARE Program, the School District had submitted a letter requesting that the City pick up its portion of the Resource Officer at Rancho and Russell Schools, and received an update on the proposal for a pre-kindergarten reading pilot program and on the college satellite. Vice Mayor Dixon commented on the nice Memorial Day Ceremony yesterday and thanked staff, especially Public Works employee Judy Ward who planted the beautiful flowers in the shape of a heart at the base of the Veterans Memorial. Mayor Esteves also thanked staff for the nice Memorial Day Ceremony.

Councilmember Polanski commented on the very wonderful Memorial Day remembrance in the City; said she had the opportunity to attend, with the Mayor and Vice Mayor, the High School Senior Awards Night; attended, along with the Mayor and Vice Mayor, the formal opening and ribbon cutting last Saturday for a new company in the Town Center, First Quadrant International; the 50th Anniversary Committee was still meeting and is looking to do a time capsule on January 26, 2005, and was soliciting ideas; the 50th Committee would also be selling the history books at the Art & Wine Festival this summer and would be asking Councilmembers to give a couple of hours in the booth.

Mayor Esteves commended the Building Division and read some positive comments he had received from an individual who had applied for a permit and who had commented that the Building Division was run very professionally. Mayor Esteves said he would like to have a presentation on the permitting process by the Building Division at a future meeting. Mayor Esteves thanked Mary Meachum, local artist whose works are currently on display at the Phantom Art Gallery at the Community Center. The Mayor announced that anyone having a problem with mosquitoes could call the City but can also call the Santa Clara County Vector Control at 792-5010. Mayor Esteves extended congratulations to all graduates of the Class of 2004 in the City of Milpitas.

AGENDA

MOTION to approve the agenda as submitted.

M/S: Gomez, Polanski.

Ayes: 5

CONSENT CALENDAR

Mayor Esteves inquired if anyone wished to make any changes to the Consent Calendar. Councilmember Polanski commented that she didn't want to remove item 9, the request to fly the Tree City USA Flag, but wanted to mention that Milpitas was again designated a Tree City USA, which was something to be proud of and shows that Milpitas values trees; and since so

many CAC Commissioners were present, she wanted to let them know that the flag will be flying at the Public Works building.

Mayor Esteves stated that he would abstain from voting on item 16 (2004 Street Resurfacing Project).

MOTION to approve the Consent Calendar, items with asterisks on the agenda, as submitted in accordance with the staff recommendations.

M/S: Polanski, Gomez.

Ayes: 5

***2.
Appointment**

Approved the Mayor's appointment of Sandeep Chahal to the Mobile Home Park Rental Review Board for a term expiring June 2006.

***8.
Fee Waiver Request**

Denied fee waiver request for the Punjabi Sahit Sabha Literary Function for rental of the Milpitas Community Center Auditorium on August 8, 2004, in the amount of \$494.

***9.
Fly Tree City USA Flag**

Authorized staff to fly the Tree City USA flag at the Public Works building.

***10.
Main Sewage Pump Station
(Project No. 6079)**

Adopted Resolution No. 7415 adopting a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the Main Sewage Pump Station Site Improvements (Project No. 6079).

***11.
Municipal Elections**

Adopted Resolution No. 7416 relating to statements of qualifications of candidates in municipal elections.

***12.
Unclaimed Checks**

Adopted Resolution No. 7417 transferring a total of \$80.06 unclaimed checks per list to the General Fund in accordance with Standard Operating Procedures 26-1.

***13.
LLM District No. 95-1
McCarthy Ranch
(Program No. 9474)**

Adopted Resolution No. 7418 preliminarily approving the Annual Engineer's Report and providing for the notice of public hearing for Landscaping and Lighting Maintenance District No.95-1, McCarthy Ranch (Program No. 9474)

***14.
LLM District No. 98-1
Sinclair Horizon
(Program No. 9489)**

Adopted Resolution No. 7419 preliminarily approving the Annual Engineer's Report and providing for the notice of public hearing for Landscaping and Lighting Maintenance District No.98-1, Sinclair Horizon (Program No. 9489).

***15.
Summer 2004
Transportation Services**

Approved agreement between the City of Milpitas Recreation Services and the Milpitas Unified School District for transportation services for Camp Stay & Play Summer 2004, in an amount not-to-exceed \$15,000, subject to approval as to form by the City Attorney.

***16.
2004 Street Resurfacing
(Project No. 4182)**

Approved plans and specifications for the 2004 Street Resurfacing project (Project No. 4182), and authorized advertising for bid proposals.

(Mayor Esteves abstained from voting on this item.)

***17.
Urban Search and Rescue
Program**

Authorized City Manager to execute a renewal contract with the Menlo Park Fire Protection District, as a Participating Agency in the FEMA California Task Force-3, Urban Search and Rescue Program, subject to approval as to form by the City Attorney.

***18.
City Employee Safety Training**

Authorized the City Manager to execute an agreement to provide safety training for City employees with Mary Krost & Associates in an amount not-to-exceed \$18,279.00, subject to approval as to form by the City Attorney.

***19.**

Approved the amended contract with County of Santa Clara (Social Services) for July 1,

- Senior Nutrition** 2004, through June 30, 2005, in the amount of \$103,698, not to exceed \$3.55 per meal, with the City and County each responsible for one half of the amount or \$51,849 each, subject to approval as to form by the City Attorney.
- *20.
Animal Control Services** Authorized the City Manager to execute a contract agreement with the Wildlife Center of Silicon Valley to provide wildlife services in the amount not-to-exceed \$6,336, subject to approval as to form by the City Attorney.
- *21.
Piedmont Road Resurface** Authorized the City Engineer to execute the Contract Change Order for Grade Tech, Inc. in the amount not to exceed \$56,435, to resurface a section of Piedmont Road with a thin layer of asphalt concrete, subject to approval as to form by the City Attorney.
- *22.
Silicon Valley Intelligent Transportation System (Project No. 4219)** Authorized the City Manager to execute the agreement amendment with 4 LEAF Inc., in the not-to-exceed amount of \$17,500, to manage and inspect the Silicon Valley Intelligent Transportation System (ITS) project (Project No. 4219), subject to approval as to form by the City Attorney.
- *23.
Main Sewage Pump Station (Project No. 6079)** Authorized the City Manager to execute the agreement amendment with Overland, Pacific & Cutler, Inc. in an amount not to exceed \$30,000.00, for additional services relating to a land transaction under consideration in the vicinity of the Main Sewage Pump Station (Project No. 6079) subject to approval as to form by the City Attorney.
- *24.
Solid Waste Contract and Rate Negotiations** 1. Authorized the City Manager to execute the agreement amendment with HFH for assistance in reviewing a ten-year extension to the BFI solid waste contract, subject to approval as for by the City Attorney.
2. Approved the budget appropriation of \$44,000.
- *25.
Miscellaneous Vendors** Approved the following purchase request: \$25,147.43 to US Metering & Technology for the purchase of 75 water meters from ¾" to 2" in size to replenish inventory stock for the Utility Maintenance Function. This vendor is the sole distributor of Badger water meters on the west coast. (Funds are available from the Public Works Department operating budget for this purchase.)

PUBLIC HEARINGS (NONE)

JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

- RA1.
CALL TO ORDER** Mayor Esteves called to order the regular meeting of the Milpitas Redevelopment Agency, meeting jointly with the City Council, at 8:11 p.m.
- RA2.
ROLL CALL** Present were Mayor Esteves, Vice Mayor Dixon, and Agency/Councilmembers Gomez, Livengood, and Polanski.
- RA3.
MINUTES** MOTION to approve the Redevelopment Agency minutes of May 18, 2004, including joint meeting with the City Council, as submitted.

M/S: Livengood, Gomez. Ayes: 5
- RA4.
AGENDA** MOTION to approve the Agenda and Consent Calendar as submitted.

M/S: Gomez, Polanski. Ayes: 5

Councilmember Livengood stated he abstained from voting on item RA8 (Agreement Amendment, Harris & Associates, Project No. 8153).
- RA5.
RESOLUTIONS APPROVING 2004/05 BUDGETS, CAPITAL** Finance Director Emma Karlen reported the final Operating Budget and Five-Year Capital Improvement Program included several modifications that reduced the budget by \$165,558, resulting in a 2004/05 Operating Budget of \$125,538,449 and did not give authority to

**IMPROVEMENT BUDGET,
& 5-YEAR CIP**

staff to adjust unrepresented management salaries; the management salaries will be brought back to the Council on June 15. Ms. Karlen further reported staff recommended adoption of the resolutions approving the budgets.

Councilmember Gomez commented that one of the questions brought up at the budget hearings related to vacant positions, and said he would like a list of the vacant positions and to know the process that will be gone through to remove those positions.

Vice Mayor Dixon commented that these are incredibly trying times and shared a recent conversation she had with the Mayor of Fremont and what Fremont is having to do to cut \$22 million. Vice Mayor Dixon said she thought what had been done in Milpitas was significant and expressed her appreciation to everybody for their hard work, which she felt starts at the top because the Council has to take responsibility for the policy given to the City Manager. Vice Mayor Dixon thanked the City Manager commenting that this hadn't been easy, but the good work was reflected out in the community.

Councilmember Polanski commented that this was her second year approving a budget for the City and she, too, wanted to commend the City Manager, the Assistant City Manager, and staff for continuing to ensure that reserves of 15 percent or more remain. Councilmember Polanski further commented that we still have not had to lay off employees or cut services, every employee of the City should be thanked, and she was proud of what the City staff was able to accomplish, especially when you see what has happened in other cities.

Councilmember Gomez thanked staff for all of their work over the last year and a half, especially when they have been asked to do more with less.

Mayor Esteves commented on the City being stable, especially the CIP projects in spite of the hard economy and as elected officials, were proud to be of service to the community. Mayor Esteves shared his personal opinion on the budget process and said he would like to see the goals and accomplishments also include any goals not accomplished; when goals were stated, he thought they should be measurable; and if a department serves the public, he would be looking for some way of obtaining public feedback. Mayor Esteves thanked everyone for a great budget.

Isaac Hughes, referring to page 7 (of the attachment for item 6), Government Code 54954.3(a), read "the other public comment period is with respect to any item on the agenda" and said that was what he was doing. Mr. Hughes said he had a problem because everybody keeps saying that there have been no budget cuts that have been taken in the City but all you have to do is drive through the City; he had never seen so much pavement patching being done by City crews and said City streets were rated some of the lowest in the county; suggested the City might want to take notes on how the city of Santa Clara takes care of its streets because they were rated among the highest. Mr. Hughes also commented on the condition of the tennis courts and said that the City should stop spending money on trees and pave the streets.

MOTION to adopt and approve the following:

1. Resolution No. 7410 adopting the FY 2004-05 Appropriations Limit of \$50,620,037 for the City of Milpitas;
2. Joint Resolution Nos. 7411 and RA222 of the City Council and Milpitas Redevelopment Agency approving the City's Final FY 2004-05 Budget of \$125,538,449;
3. Joint Resolution Nos. RA223 and 7412 of the Milpitas Redevelopment Agency and the City Council making findings following a public hearing for use of Redevelopment funds;
4. Resolution No. RA224 of the Milpitas Redevelopment Agency authorizing payments to the City of Milpitas pursuant to the Second amendment and Restated Public Works

agreement;

5. Resolution No. RA225 of the Milpitas Redevelopment Agency determining that the planning and administration expenses to be funded in FY 2004-05 by the Housing Reserve Fund is necessary for the production, improvement and/or preservation of affordable housing for the low and moderate income households;
6. The FY 2004-05 Capital Improvement budget of \$14,323,712; and
7. The Five-Year Capital Improvement Program for the Fiscal Years 2004-05 through 2008-09 of \$61,792,766.

M/S: Polanski, Livengood.

Ayes: 5

***RA6.
CIVIC CENTER PROJECT
PROJECT NO. 8026**

Approved a sole source purchase order with Severn Trent Services in the amount of \$33,612 for an automatic chlorine generator and feeding system at the City Hall front water fountain and rear waterfall ponds.

***RA7.
AFFORDABLE HOUSING
UNIT ASSISTANCE**

Approved authorization to enter into negotiations with USA Properties fund, Inc., to provide Agency financial assistance from its 20 percent affordable housing set-aside funds.

***RA8.
AGREEMENT AMENDMENT
LIBRARY PROJECT
STREET IMPROVEMENTS**

Authorized the City Manager to execute the agreement amendment with Harris and Associates in the amount not-to-exceed \$43,000 for Winsor and Weller Avenue Plan Line, right-of-way vacation, and street improvements, subject to approval as to form by the City Attorney.

Councilmember Livengood abstained.

**RA9.
ADJOURNMENT**

There being no further Redevelopment Agency business, Mayor Esteves adjourned the Redevelopment Agency meeting at 8:25 p.m.

The City Council meeting continued.

REPORTS OF OFFICERS & BOARDS

**1.
Donation Request
Kiwanis Child Spree Event**

Mayor Esteves said he had received a letter from Mike Mendizabal, President, Milpitas Kiwanis Club, requesting the Council authorize the same contribution approved last year towards the Child Spree event, which is a great program.

MOTION to approve a donation of \$1,500 to the Child Spree Program from the Council's Community Promotions fund.

M/S: Dixon, Polanski.

Isaac Hughes said he had a real problem with people getting money from his tax dollars that don't show up so that he would know whom these people are; he thought it was also important for them to be present as it would provide their event with some publicity.

Vice Mayor Dixon explained that Mike Mendizabal is President of the Milpitas Unified School District Board of Education and would have been present tonight but this is the end of the school term and many school events were happening, and she was sure he regretted not being present. Vice Mayor Dixon further commented that she had participated in this event and thought it was a very worthwhile cause.

VOTE ON MOTION:

Ayes: 5

UNFINISHED BUSINESS

3.
July 4th Programs & Fees

Recreation Supervisor Kathleen Yurchak reviewed the activities planned for July 4th starting with the “Waiving the Red, White, and Blue Pool Party” from 1:00 p.m. to 5:00 p.m. at the Sports Center, the gates opening at 6:00 p.m. for the pre-fireworks activities that included entertainment and food vendors, and a 23 minute fireworks show at 9:30 p.m. Ms. Yurchak reported that last year the fireworks show attracted 6,779 participants generating \$4,736 in revenue; this year staff was recommending changing the \$2.00 admission fees to apply to attendees 16 years and over, anticipating \$4,200 in revenue, and recommending that the \$2.00 admission fee for both the pool party and the fireworks be applied to the Recreation Assistance Program (RAP), which assists families in participating in year-round Recreation Services programs and activities. Ms. Yurchak further reported that to date this program had assisted 66 households (families with children to seniors who would not normally be able to afford to participate in the programs) and with the \$2.00 admission fees applied to the RAP, it would potentially benefit an additional 22 households.

Councilmember Gomez inquired how the \$2.00 fee for the fireworks show compared to what other jurisdictions charged. Ms. Yurchak replied of the surrounding cities, Santa Clara had fireworks at the Great America Amusement Park, where an admission fee was paid; she was not aware of any other cities. Councilmember Gomez inquired if staff noticed any drop in attendance in 2003 when the fee was started. Ms. Yurchak responded there had been an increase in attendance and estimated it to be around 1,500.

Councilmember Polanski said the questions she had received from the community were why was there no parade this year and why was the City charging people for the fireworks show and asked that staff clarify, noting that she had received some information that there could be some safety and other issues. Ms. Yurchak responded there were two reasons for the admission charge for the fireworks show last year – to provide a tracking mechanism to determine the number of participants entering the gates and to provide a revenue generator to offset some of the costs of the event.

Councilmember Polanski asked for further clarification that this year instead of offsetting the costs, staff was looking at helping families unable to afford the recreation camps or other activities. Ms. Yurchak responded 2004 would be the second year the Recreation Assistance Program would be offered, the CDBG funding had decreased from the last fiscal year, which meant there would be a decrease in the number of families receiving help, and staff estimated that 22 more families would be helped with the 4th of July activities admission fees.

Councilmember Polanski said that as a Councilmember, she knew back in February the possibility of not having a parade in 2004 was being looked at and doing something different because the 4th fell on a Sunday; it was discussed with the 50th Anniversary Committee because the 4th of July was one of the bigger events of the year; there was disappointment because of the possibility of the parade being cancelled and she felt it was unfortunate that none of those Commissioners were called because the Committee was wanting to see an old fashioned type event – like when it was at Cardoza Park in the past. Ms. Yurchak commented that was the idea behind the free entertainment; although there would be food vendors, people were also being encouraged to bring their own food and sit out on the fields and enjoy the entertainment, etc., and enjoy a fun family atmosphere.

Councilmember Polanski said when you look at everybody working together as a team, we all slipped up a little bit; this was something that should have been agendized and as she had said to people who have called her, she took full blame because as a Councilmember, she had every right to ask for it to be agendized; she thought we all messed up here and it was something that shouldn't happen in the future because the 4th of July was always a wonderful feeling of camaraderie and getting together and the parade was a great part of it.

Vice Mayor Dixon said she had a conversation about this with Marsha Grilli and asked Ms. Grilli to come to the podium and share her comments about the city of Santa Clara.

Marsha Grilli said her husband worked for the city of Santa Clara where they did an old fashioned community picnic at Central Park in partnership with the Santa Clara School District, it sounded very similar to what Milpitas was presenting, however, Santa Clara did not charge admission for the all day event with fireworks and music.

Vice Mayor Dixon said this had come out in a staff report sometime in February, all Councilmembers had an opportunity to say what they wanted to say, she had suggested doing a two-day event with the parade on Saturday and everything else on Sunday but that did not receive the response she had expected; the only issue she had with the \$2.00 was that it was such a small amount of money and asked if there was any thought given to making it more on a voluntary basis. Vice Mayor Dixon further stated she would rather it be a voluntary donation rather than a set charge, having something that would show where the money went, how it would benefit families that could not afford to give recreational access to their children, some might give more and others wouldn't give anything, but she would like to forego the charge this year.

Councilmember Gomez, referring to Councilmember Polanski's comment regarding agendizing items, said he thought she made a good point that each of the Councilmembers had an opportunity to agendize the parade for discussion; there was no one to blame but ourselves because they were the policy makers and could set the perimeters by which public hearing were held. Councilmember Gomez asked that an item be agendized for a discussion of the minimum standards by law when a public hearing is required or the kinds of things the Council wants to be agendized so that staff had guidelines to work with. City Attorney Mattas said that could be done and the Council may wish to consider, if the Council elects to go forward with a Council Handbook, that those types of procedures could be identified in a Handbook as well.

Mayor Esteves said, if he remembered right, that Recreational Services provides the Council with a year-long program of activities and he couldn't remember if the July 4th parade was mentioned. Ms. Yurchak responded that when the Special Events Calendar is created, it is submitted to the Council and she thought the parade was included in that calendar; however, as more research was done closer to the event, challenges were encountered and things do change.

Mayor Esteves acknowledged staff for informing the Council about the issue as early as February 2004; he wanted to make sure there was a public event and inquired if staff had a security plan. Ms. Yurchak responded Recreation staff was working the Police and Fire to ensure public safety, the Police Department was working on traffic mitigation and the newly completed egress at the Sports Center would ease traffic.

Councilmember Polanski said she thought Vice Mayor Dixon's suggestion on the fee was excellent and asking for a donation was something she wanted to consider with the monies collected going towards the RAP fund. City Manager Wilson, referring to the fee, said it was totally at the Council's discretion and staff would be happy to take the Council's direction.

MOTION to note receipt and file the update report and to forego the \$2.00 admission fees directing staff to come up with a booth or something that shows what the money will be used for and to ask for a voluntary contribution.

M/S: Dixon, Polanski.

Ms. Yurchak requested clarification that the motion foregoing the \$2.00 fee was for both the Pool Party and the fireworks admission or just for the fireworks. Vice Mayor Dixon responded it was for both events; the second to the motion agreed.

Councilmember Gomez inquired if foregoing the \$2.00 fee for the Pool Party would create an attendance problem for staff. Ms. Yurchak responded it would not because of the occupancy regulations for the pool and the pool deck, which would be monitored.

VOTE ON MOTION:

Ayes: 5

**4.
Mayor's Term Length**

Acting Planning & Neighborhood Services Director Tambri Heyden reported that the Community Advisory Commission was recommending the Mayor's term of office be increased from two to four years; after presenting its initial recommendation to the Council in December 2003, the Council asked the Community Advisory Commission (CAC) to re-evaluate its recommendation after studying the correlation with existing term limits and soliciting more public input; and Commissioner Chris Lee would be presenting the follow up to the CAC Subcommittee report.

Commissioner Chris Lee presented an overview on how the CAC came to the recommendation of placing a measure on the November ballot to change the Mayor's term length from two to four years. Mr. Lee reported there were three open issues brought up after the initial presentation to the Council in December 2003, and the Council had asked that more research be done to gather public input regarding the Mayor's term limits, the specific wording on what to place on the ballot, and to also consider how the term limits would affect the existing Mayor and Councilmembers. Mr. Lee further reported on the public input (survey) conducted with 92 surveys resulting in 77 in favor of extending the Mayor's term to four years; 15 against a four-year term; 69 in favor of limiting the Mayor to two consecutive four-year terms; 8 against limiting the Mayor to two consecutive four-year terms; and 15 undecided on the term limit question. Mr. Lee also reported on a public hearing held on April 7, 2004, with two individuals in favor of the Mayor's term remaining at two years and a letter from another individual expressing support of a four-year Mayor's term. Mr. Lee reviewed proposed wording for a ballot measure and how the existing Mayor and Councilmembers would be affected if the voters approve a new four-year term for the Mayor that would begin in 2008. Mr. Lee had prepared a graph showing the current Mayor and Councilmembers' terms. Councilmember Polanski said she liked the slide Mr. Lee had prepared but it didn't go back far enough to include everyone's term since they came on the Council and it also didn't show the only person every affected by term limits. Councilmember Polanski distributed another graph she had prepared expanding on Mr. Lee's. Mr. Lee noted that the ballot questions were reviewed by the City Attorney and some revisions to the wording had been made.

City Attorney Mattas said the suggested changes were to make the questions consistent with State Law requirements; State Law provided that the question should be substantially in the form of the wording "shall the term of office of the Mayor be increased from two to four years?" he felt the two alternatives presented accomplished that; the CAC, in terms of its recommendation, seemed to have some emphasis in the last clause of Alternate 1 (the same term of office as other members of the City Council); he felt it was consistent with law, however, the State Law provisions did not make reference to that type of terminology.

Councilmember Polanski, referring to the slide she had created, explained that she went back to 1975 to reflect all of Councilmember Livengood's years of service; she thought it would be good for the Council to also see, based on the term limits, that former Mayor Manayan had been the only one termed out due to term limits.

Mr. Lee, presenting his last slide, reported the CAC and the CAC Subcommittee definitely wanted to place this on the 2004 ballot and let the voters of Milpitas decide whether the term limit should be changed.

Mayor Esteves inquired about the impact on the current Council if the voters approved the ballot measure and said if he were to make his own proposal, he would recommend that the current Council should not be impacted at all; he thought the current Council should still conform to the existing term limit maximum of 14 years; in other words, whatever is decided, it should apply to only newly elected officials and explained that he thought it was very ethical that the current Council should not decide anything that would impact any of the current Council either positively or negatively.

Mr. Lee agreed with the Mayor, commenting that the main thing was that the proposal would increase the maximum number of consecutive years (currently 14 years, which would be increased to 16 years).

Mayor Esteves requested clarification if it would impact any new elected officials who were not currently on the Council. City Attorney Mattas responded that technically, the only impact he could see was if the Council and the voters accepted the potential amendment allowing for two four-year terms on the Council and two four-year terms as Mayor would potentially be Councilmembers Polanski and Gomez, who could go from 14 years to 16 years if they chose to. Mayor Esteves said he was against that and if he were to make a proposal, it would never be applicable to anyone of the current Council so that it could be an objective proposal.

Councilmember Polanski, referring to the VTA's Elected Officials Reference Guide that lists all the term limits for the different cities, commented on how some of the cities dealt with term limits; she thought the Milpitas information was difficult to read; and inquired if the CAC or the Subcommittee gave any consideration to the Mayor and Council being limited to two four-year terms. Mr. Lee responded just the Mayor's terms was discussed in the proposal. Councilmember Polanski asked if there had been any discussion of the Mayor serving two terms and sitting out two years before running again. Mr. Lee responded four consecutive terms was discussed.

Vice Mayor Dixon said when she went through the Elected Officials Reference Guide, she found that the majority had either a term limit or a flat out two four-year terms; some cities said a person had to stay out a whole four-year cycle and other cities required two full years; she thought the actual wording for Milpitas put together in 1996 by Mr. Livengood was never meant to be straight forward; when it went to the voters, most people who voted on the current wording, under the guise of term limits, were greatly confused; she applauded the CAC and the Subcommittee for their efforts but if she were to make a recommendation to go back to the public, she would want it to be something similar to the City's peers within the County; her preference would be if you want to run for elected office in this community, you could run for Mayor for two four-year terms; if you want to run for Council, two four-year terms; if you finish Council and maybe run for Mayor, you wait out two years or four years, she didn't care but felt it was way too complicated and the public deserved much better than what was currently on the books.

Councilmember Gomez said he previously had been opposed to this issue because he felt it was important every two years to elect a majority to the Council so if the public didn't like the majority of the Council, the public could weed them out; the other issue was he saw no problem with elected officials campaigning as it was a way to get back to the community; also, if someone didn't like the Mayor, which is the most important office in the City, the public could change that and wouldn't have to wait four years to do it; he had stated last time that it wasn't an issue when he went door-to-door (not one person told him they were concerned about this issue); however, with the public input gathered by the CAC and the Subcommittee, he might have been wrong and would not get in the way of placing it on the ballot.

Councilmember Livengood said focusing on the main question of should the Mayor's term be extended from two to four years, he had been a long-time proponent of that; having served two terms as Mayor and having to campaign shortly after being elected, he felt it did put pressure on the Mayor and made it a little more difficult to be as focused; he also felt it was a wise thing to put it before the voters because they were the ones who chose two years over four years by a pretty huge margin in 1977. Councilmember Livengood further stated every time you talk about this, term limits always plays a role because it was very difficult, based on State Law (which states that term limits must be prospective in nature) to fashion something that didn't impact the current Councilmembers in one way or another; he wasn't sure that taking it out to 2012, when all current Council terms would be termed out, was a good thing

for the voters to vote on something that would not be effective for eight years; every city does term limits and the Mayor's term differently, noting that the city of Santa Clara, which has a two-term limit and a directly elected Mayor allows someone to run for two terms as Mayor and two terms as Councilmember, which would give them 16 years. Councilmember Livengood commented that Milpitas was one of the only cities with a two-year directly elected Mayor and from his perspective, he had long supported the concept of a four-year Mayor and had long said if it were to be changed, it needed to go before the voters. Councilmember Livengood said he thought the CAC and the Subcommittee had done a good job of reviewing the issue and coming up with a reasonable proposal to put before the voters.

Mayor Esteves said he was also in favor of changing the Mayor's term to four years but because he was the current Mayor, he thought it should not affect the current Council so that it didn't appear the Council was doing this for themselves. Mayor Esteves further stated when he was elected, he was elected under the current policy and thought that he should stay with that policy; and because he saw a benefit of changing the Mayor's term from two to four years, he was suggesting that it should be applicable for the future Mayor. Mayor Esteves said he was in favor of future elected bodies having a two term maximum as Councilmember (four years each term) and a two term maximum for Mayor (four years each term).

Councilmember Polanski inquired about the cost of placing a measure on the ballot. City Clerk Gail Blalock responded based on the estimates she received from the County for the General Municipal Election for the budget, she estimated the cost between \$22,000 and \$25,000, depending on how many pages would be needed in the sample ballot.

Councilmember Polanski said she thought the voters should decide and the only thing she would like to consider was changing it so that everyone would have two four-year terms and then sit out for two years before coming back, with no Mayor or Councilmember serving more than two consecutive terms.

Councilmember Livengood asked the City Attorney to explain how Councilmember Polanski's proposal would affect the current Council. Mr. Mattas said it would be prospective; the item on the agenda was related to the Mayor's term and the Mayor's term limit and the discussion of the Council suggested that the Council might want to have some further discussion if the intent was to modify the term limit condition to have applicability to the City Councilmembers. Mr. Mattas suggested if the Council wished to have that discussion, the Council could address the implications of those issues when it comes back.

Councilmember Livengood said when he proposed term limits in 1996, he proposed that it affect the current Councilmembers and was told it could not be done. City Attorney Mattas responded that was correct; the law that allows term limits expressly makes them prospective and, in fact, Milpitas had implemented them prospectively.

Mayor Esteves said he thought the Council should also discuss term limits for Councilmembers.

MOTION to accept the CAC's recommendation for consideration of making the Mayor's term a four-year term to be capped at two consecutive four-year terms and to place the issue before the voters this November 2004; and to direct staff to come back at the next meeting, if at all possible, for consideration of making Council terms two consecutive four-year terms.

M/S: Dixon, Livengood.

Councilmember Livengood said he wanted a very clear report from staff on what impact this would have on current Councilmembers because that was where the rubber meets the road in the eyes of the public, and he wanted to know exactly what impact it would have on the current Council.

VOTE ON MOTION:

Ayes: 5

City Attorney Mattas said he would make every effort to have this back at the next meeting, however, if it was not possible to get everything put together, it may come back at the first meeting in July.

NEW BUSINESS

5. Ethics Code Adoption

Acting Planning & Neighborhood Services Director Heyden reported since the contract was executed in January to hire an ethics consultant, 44 one-on-one stakeholders interviews, 187 citizens surveys were completed, 10 Steering Committee meetings, four special Community Advisory Commission meetings were held, input was received from 103 participants at four workshops, and four months later the final draft of a Code of Ethics was before the Council. Ms. Heyden further reported the Code of Ethics was comprised of six core values that are intended to be minimum expectations (honesty, respect, fairness, teamwork, stewardship, and accountability) of those bound by the Code and as a companion to the Code was a set of Behavioral Standards containing five categories of behavior for each of the core values. Ms. Heyden also reported it was proposed that City Standard Operating Procedure 16-01, formerly called the "Ethics Code" and last revised by the Council on March 17, 1976, through Resolution No. 2714, be renamed the "Code of Conduct for Public Officials" and applied to all elected and appointed officials and city employees. Ms. Heyden reported the Implementation Plan for the Code of Ethics was intended to identify educational methods and outline how to monitor the effectiveness of the Code of Ethics and program, and reviewed the 14 implementation measures listed on the agenda. Ms. Heyden concluded by reviewing the next steps under the contract that included a training schedule for the Council, campaign candidates, and senior management staff. Ms. Heyden further reviewed the recommendations before the Council.

Councilmember Gomez asked for clarification if lobbyists and campaign consultants were being targeted in the Code. Dr. Shanks responded you would want them to disclose their relationships to the city and also, what it not in the San Jose registration, the relationship between the lobbyist and the Councilmember if the lobbyist has been a campaign consultant, noting that this was one of the items that needed more work. Dr. Shanks said the idea was to get as much information out there as possible so people know what, if anything, is influencing a decision and what are the relationships.

Councilmember Livengood said he wanted to make it clear that the August 10 training date for the Council did not work for him as he would be gone August 6-13.

Vice Mayor Dixon commented that with respect to lobbyists/consultants, she really appreciated the series the San Jose Mercury had done, which was very enlightening to her. Vice Mayor Dixon said she wanted to bring a particular issue up, an example of something that happened in Milpitas going back to 2001 when the Los Esteros Power Plan by Calpine was being put in; she didn't find out until later that out of the five Councilmembers, she was the only one not approached by the paid Calpine lobbyist, who happened to be Mr. Ajlouny, who was a consultant; her concern, real or perceived, was did this create a problem in the decision making and in this case, she believed it did. Vice Mayor Dixon said she thought this Code was great, Milpitas will be a leader in the region, she thought it was very important to have a registration for lobbyists/consultants because they tend to do the same job; with respect to the issue of a time of reflection, she liked that but was not so sure the end of the meeting would be appropriate and suggested placing it at the beginning of the agenda, maybe under Announcements, which would give everybody on the Council the ability to bring something up. Vice Mayor Dixon commented that she was very proud of the Milpitas citizens for coming forward.

Councilmember Polanski commended the CAC and said she was very pleased with the process and how it worked; she didn't know how much this would affect the election in November but believed the critical part was the educational part, such things as getting the information out to the community on what a slate mailer is, or when you get a brochure or

document that looks like the Milpitas Post to look at the fine print to see who paid for it. Councilmember Polanski said she thought education the public what's good and not good in campaigns would make a big difference; it may not happen this year or next but if the citizens continue to hold the elected officials and candidates accountable, there will be wonderful changes within the whole election process and also in how we as a Council and senior staff work together. Councilmember Polanski further stated she was very pleased with the final product, agreed with Vice Mayor Dixon about placing the reflections at the beginning of the agenda and was important it become a standard part of the agenda.

Dr. Shanks agreed that the standard part of the agenda was a great idea as long as it was something you talk about and doesn't become routine or the Council doesn't verbalize what the issues are.

Mayor Esteves expressed his appreciation to the CAC and recognized its Chair Arsenio Illoreta, Vice Chair Syed Mohsin, and Commissioners Chris Lee, Jenifer Lind, Nestor Luna, Marie Pham, and Craig Ranker, and former member Ray Maglalang, who were present in the audience.

Vice Mayor Dixon commented on a "piece" being dropped throughout the entire City that was full of lies, innuendos, misinformation, planted stories in the Metro, included a particular letter from the POA attorney where it didn't print her three-page response and also the response back from the POA attorney. Vice Mayor Dixon said she wished the best for the remainder of the political process because it was fine and dandy for everybody running now to say, after the Ethics Code is adopted, to say now we're all going to behave after already spending thousands of dollars on a political hit piece throughout the city. Vice Mayor Dixon further stated it was very disappointing to her that Milpitas politics has come down to this point; it shouldn't be that was because she has always separated out Milpitas to be a better city than most in the County and offered her commitment to the public that she wouldn't lower herself to that degree because nothing in her world was worth that.

Dr. Shanks commented that at the beginning of the last workshop, somebody handed him a copy of the piece Vice Mayor Dixon was referring to and if the Council approves the behavioral standards, suggested matching them against any pieces that have come out or will come out because there was a learning process that needed to be gone through because some things that have been acceptable in the past will no longer be acceptable.

Councilmember Gomez, referring to the piece that was shown, commented that he wanted to be very careful and was not sure where the line is but thought we need to be very cautious about campaigning from the dais

Councilmember Livengood commented that the first Code adopted was in February 1976, he voted in favor of it, and questioned the sixth "whereas" in the proposed resolution, asking if it applied to all City employees. Dr. Shanks responded that the decision was made at the beginning of the process that the Ethics Code would only cover senior staff. Councilmember Livengood asked if the SOP covered all employees. Dr. Shanks responded the SOP did apply to all City employees.

Councilmember Polanski commented that when Dr. Shanks brought up the County Ethics foundation, she hoped Milpitas would do 100 percent better than what they do because she thought what they do is unethical. Councilmember Polanski reflected on her personal experience during the last election when charges were brought against her and former Planning Commissioner Paul Hay, noting that it made the papers, there was a hearing, they did their press release, and she attempted to press charges but was told they were sorry but they don't take complaints 24 hours before the election and do nothing after; several months after her election, she found out the Ethics Foundation worked closely with the campaign consultant Vic Ajlouny, who seems to be intimately involved in many campaigns in Milpitas; she thought when we are looking at this team that might help us with that process, she didn't

know what the litmus test will be to find if they have any interests and asked how that would be done.

Dr. Shanks suggested finding university professors whose interests are typically not in politics or retired justices, commenting that it would be the great search for the ethical or fair person.

Councilmember Polanski said she also thought it important for the community to gather examples of good and not so good campaign materials over the years to help in the educational phase.

Mayor Esteves asked if there would be a public information program that would include eye-catching ads. Dr. Shanks responded the city of Santa Clara has been engaged for a number of months in developing these kinds of materials that could easily be adapted by other cities for a public information campaign.

Mayor Esteves commented that the implementation measures required all Councilmembers to attend a two-session ethics training series but he only saw one Council training session in the recommendation. Ms. Heyden responded staff would be coming back to the Council with the second session.

Councilmember Gomez noted that he wouldn't be here on August 10.

MOTION to:

1. Adopt Resolution No. 7413 approving the City of Milpitas Code of Ethics and the Behavioral Standards document;
2. Adopt Resolution No. 7414 revising and renaming Standard Operating Procedure (SOP) No. 16-1 (formerly known as the Code of Ethics);
3. Reviewed and approved all implementation measures recommended in the Implementation Plan for the City of Milpitas Code of Ethics;
4. Approved a City Council special meeting for Ethics Code training, the date to be determined; and
5. Set the date of August 19, 2004, at 7:00 p.m. as a campaign candidates training workshop.

M/S: Polanski, Dixon.

Ayes: 5

CONTINUING REMAINING ITEMS 6 & 7

Mayor Esteves suggested that due to the lateness of the hour, the Council either take a break or continue the remaining two items to the next meeting.

Vice Mayor Dixon commented that it was 10:45 p.m. and the Council was getting ready to address open government and there was no one left in the audience. Vice Mayor Dixon said she would not be opposed to putting these two items at the beginning of the next Council agenda.

MOTION to continue items 6 and 7 to the June 15, 2004, Council agenda.

M/S: Dixon, Livengood.

Councilmember Gomez said he had a concern as to how the request from the Milpitas Post related to policy. Vice Mayor Dixon said she was concerned with that, too, and wanted action now; it had been done before and the City had given that information out before. Councilmember Gomez said he also wanted to settle the issue tonight.

City Attorney Mattas commented that one important consideration for the Council was that prior to the more recent appellate court decision, the City had included the payroll information on its agenda; when the Post made its previous request, there was no court decision confirming the privacy interests of employees and the Council had already disclosed it; that

information is not included in the Council agenda anymore so it isn't expressed as a public record every two weeks; if the Council wanted to release the information now, the Council could simply provide direction and to the extent we can provide it, we do so but strongly recommended the employees be advised and given an opportunity to respond.

Councilmember Polanski said she agreed with the motion to defer the other two items and that the Council finalize this issue tonight; since the taxpayers of Milpitas pay the salaries of everybody who is employed, they have a right to know and since the information had been provided to the Post before, she thought it should be given to them again.

Councilmember Gomez said he agreed.

Vice Mayor Dixon, the maker of the motion on the floor, said she would add it to the motion.

City Attorney Mattas said the only issue of immediate need was whether the Council wants staff to provide notice to the employees; the rest was included in the policy.

Vice Mayor Dixon added to the motion on the floor to give direction to release the information that has been released in the past to the Milpitas Post and to continue the rest of the discussion to the next meeting.

City Attorney Mattas asked for clarification that the motion included notice to the employee unions. Vice Mayor Dixon responded yes.

Isaac Hughes asked if a policy is written so that somebody going to a department that has the information and they say they need to run it by the City Attorney, how is the public protected (stating his personal experience on many occasions but that fortunately, most of the time Mr. Mattas has given the okay for him to receive the information). Mr. Hughes further stated that the 10 day rule for dissemination of information to the public was one that when the information request is made in writing, it can have a 10 day response; when the request is made verbally and through the department where they have the information, the material is made available without hindrance, delay, or obstruction that same day.

Councilmember Livengood said he wanted to make it clear that public information requests aren't all the same; some have time urgencies associated with them; when there is a public information request that deals with a Council-related item that is coming up, it wasn't acceptable to say ten days; and when this comes back, he wanted to take a look at those requests and how they related to what is going on in the City.

VOTE ON MOTION:

Ayes: 5

ADJOURNMENT

There being no further Council business, Mayor Esteves adjourned the City Council meeting at 10:57 p.m.

Gail Blalock, CMC
City Clerk

The foregoing minutes were approved by the City Council as submitted on June 15, 2004.

Gail Blalock, City Clerk

Date

APPROVED MINUTES
CITY OF MILPITAS

Minutes:	Regular Meeting of Milpitas City Council (Including Joint Meeting with Redevelopment Agency)
Date of Meeting:	May 18, 2004
Time of Meeting:	6:00 p.m. (Closed Session) 7:00 p.m. (Regular Session)
Place of Meeting:	Milpitas City Hall, 455 E. Calaveras Boulevard

ROLL CALL

Mayor Esteves called to order the regular meeting of the Milpitas City Council at 6:00 p.m. Present were Mayor Esteves, Vice Mayor Dixon, and Councilmembers Gomez (arrived 6:05 p.m.) Livengood (arrived 6:05 p.m.), and Polanski.

CLOSED SESSION

Mayor Esteves publicly stated the Council would convene in Closed Session to discuss the following items listed on the agenda (City Attorney Steve Mattas clarified that there was nothing to discuss for items 1, 2, and 7 and therefore, they should be removed from the agenda):

1. CONFERENCE WITH REAL PROPERTY NEGOTIATOR (REMOVED)

(Pursuant to Government Code Section 54956.8)

Property: APN #022-08-042

Negotiating Parties: City of Milpitas and County of Santa Clara

Agency Negotiator: Thomas J. Wilson

Under Negotiation: Terms and Conditions for Disposition or Lease

2. CONFERENCE WITH REAL PROPERTY NEGOTIATOR (REMOVED)

(Pursuant to Government Code Section 54956.8)

Property: Vacant Property N. Main Street (APN No. 2208003)

Negotiating Parties: City of Milpitas/Milpitas Redevelopment Agency and Kathleen Cardoza

Agency Negotiators: Thomas J. Wilson and Blair King

Under Negotiation: Terms and conditions for acquisition of property

3. CONFERENCE WITH REAL PROPERTY NEGOTIATOR

(Pursuant to Government Code Section 54956.8)

Property: 163 North Main Street, APN #022-08-041

Negotiating Parties: Mid-Peninsula Housing Coalition, a California

Non-Profit Public Benefit Corporation, City of Milpitas, and Milpitas Redevelopment Agency

Agency Negotiators: Thomas J. Wilson and Blair King

Under Negotiation: Terms and conditions for disposition or lease

Councilmember Livengood abstained from the discussion of the above item (item 3).

4. CONFERENCE WITH LABOR NEGOTIATOR

(Pursuant to Government Code Section 54957.6)

Agency Negotiator: Eddie Kreisberg and Cherie Rosenquist

Employee Organization: LIUNA

5. CONFERENCE WITH LABOR NEGOTIATOR

(Pursuant to Government Code Section 54957.6)

Agency Negotiator: Thomas J. Wilson

Employee Organization: Unrepresented Employees

6. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

(Pursuant to Government Code Section 54956.9[a])

Title: Milpitas v. Turner Construction et al.

Santa Clara County Superior Court Case No. CV008400

7. CONFERENCE WITH REAL PROPERTY NEGOTIATOR (*REMOVED*)

(Pursuant to Government Code Section 54956.8)

Property: 120-150 Winsor Street and 116-130 N. Main Street

Negotiating Parties: Milpitas Redevelopment Agency and Dorothy A. & Ruth A. Winsor

Agency Negotiators: Thomas J. Wilson and Blair King

Under Negotiation: Terms and conditions for acquisition of property

Mayor Esteves adjourned the meeting to closed session at 6:01 p.m.

The City Council meeting reconvened at 7:06 p.m. with Mayor Esteves presiding and Vice Mayor Dixon and Councilmembers Gomez, Livengood, and Polanski Gomez present.

**CLOSED SESSION
ANNOUNCEMENTS**

There were no closed session announcements.

PLEDGE

Members of Troop No. 92 led the Council and audience in the pledge of allegiance.

MINUTES

MOTION to approve the City Council minutes of May 4, 2004, including joint meeting with the Redevelopment Agency, as submitted.

M/S: Dixon, Livengood.

Ayes: 5

SCHEDULE

Vice Mayor Dixon added the following meetings that she would be attending: May 20, VTA Finance Administration Meeting; June 3, Santa Clara County Library Joint Powers Authority; June 4, a joint meeting of the VTA Board and Board of Supervisors; and June 17, another meeting of the VTA Finance Administration Committee. Councilmember Polanski reported that tomorrow (May 19) the City's 50th Anniversary Committee would be meeting at 7:00 p.m. to discuss some upcoming activities and participation.

MOTION to approve the Schedule of Meetings as amended.

M/S: Gomez, Livengood.

Ayes: 5

PRESENTATIONS

Bill Reisinger, Chair of the Milpitas Bicycle Transportation Advisory Commission, presented the Mayor with the Bicycle Friendly Community Award, Honorable Mention 2004, from the League of American Bicyclists commenting that this was a very prestigious Award and was received because of the City's work and planning a bicycle friendly community. Mayor Esteves accepted the Award on behalf of the City Council.

Mayor Esteves read a proclamation declaring May as "Bike to Work Month" and May 20, 2004, as "Bike to Work Day" and presented it to Bill Reisinger, Chair, Bicycle Transportation Advisory Commission. Mr. Reisinger encouraged everyone to bike to work on Thursday noting that Milpitas would have three energizer stations, and he would be working at the energizer station at Montague and Main Street.

Mayor Esteves read a proclamation celebrating "Memorial Day 2004" and proclaiming Monday, May 31, 2004, at 9:00 a.m. at the Veterans Memorial Park in the Civic Center Plaza as the date, time, and place for the City of Milpitas to celebrate and presented the proclamation to Sam Tiumalu.

Mayor Esteves read a proclamation declaring May 2004 as “Lions Eyeglass Recycle Month” encouraging all Milpitas citizens to donate outdated pairs of eyeglasses to this valuable cause and presented the proclamation to Don Ryan and Ray Maglalang of the Milpitas Lions and Lions District Governor Elect Larry Hildalgo. Mr. Ryan thanked the Mayor for the proclamation and commented that in 2003/04, 3.5 million pair of eyeglasses were collected and distributed throughout the world. Mr. Hildalgo expressed his appreciation and said he was glad Milpitas was doing this.

Mayor Esteves presented a Commendation to Chris Kaldy for his work and contributions as Music Director and Set Designer of the Rainbow Theatre Production of *Chicago*. Mr. Kaldy thanked the Mayor and the City for making it possible to present this musical at the High School.

Mayor Esteves presented a Commendation to Anne Kelly for her work as Director of the Rainbow Theatre Production of *Chicago*.

Mayor Esteves presented a Commendation to Marcia Morrow in recognition of her many contributions to Milpitas youth and for her recognition as a recipient of the Silver Beaver Award given by the Boy Scouts of America National Council to outstanding male and female citizens who have provided distinguished service to youth on the local level. Ms. Morrow said the Commendation was a complete surprise to her, thanked the Mayor and Council, and said that the more she gives, the more she gets back.

Mayor Esteves presented Certificates of Appreciation to the sponsors of the May 1, 2004, Global Village Event; present to receive Certificates were representatives of the Filipino American Association of Milpitas, Inc.; Milpitas High School MEChA Club; Milpitas Lions Club; Scarab Productions; Tzu Chi Foundation; Vietnamese Folk Arts Institute; Borders Books and Music; and Subway Sandwiches. Unable to be present were Asiya Asif; India Community Center; Milpitas Alliance for the Arts; Milpitas Sister Cities Commission; Milpitas Youth Advisory Commission; Nigerian Language and Cultural Institute; and San Francisco Peace Corps.

CITIZENS FORUM

Mayor Esteves invited members of the audience to address the Council on any subject not on the agenda, requesting that remarks, including any visual or technology-assisted presentations of any kind, be limited to two minutes or less, and noted that the City Clerk would be using the timer.

Mr. Cacao, President of the Fil-Am Association of Milpitas, invited everyone to attend their multi-cultural festival at the Milpitas Community Center on June 5, 2004, beginning at 2:00 p.m., and continuing with social dancing from 7:00 p.m. to midnight.

A Milpitas High School Student wanted everyone to know that the MEChA Club would be having a car wash on Saturday, May 22, 2004, from 10:00 a.m. to 3:00 p.m. to raise funds for a scholarship to be given to a Senior this year.

Jennifer Lind gave an update on the Senior Scholarship drive for Milpitas High School students and invited everyone to the Senior Award Night which would be taking place at 7:00 p.m. on Thursday, May 20, 2004, in the large gym. Ms. Lind reported that 25 scholarships (\$500 each) would be awarded and read the list of recipients.

Art Swanson said he thought we were trying to copy of the City of Industry by inviting Safeway as a neighbor and talked about using an odometer to help children overcome the fear of learning the place value system.

Rob Means said about three years ago, he began talking about the “big rollover” in the oil industry and commented on its significance and how it will affect everyone.

Frank DeSmidt, Chamber of Commerce, invited everyone to attend the Chamber’s next Mixer, which would be a trade show, at the Crown Plaza on Thursday, May 20, 2004, at 5:00 p.m.

ANNOUNCEMENTS

City Manager Thomas Wilson announced that since July 4th falls on Sunday this year, it created some difficulties with the logistics and planning for a July 4th parade on Main Street; this year, due to church services and some of the impacts on the businesses in the area, a parade was not proposed but activities at the Sports Center would be increased and include a “Waving the Red, White and Blue” Pool Party, a band concert featuring two bands, and ground fireworks starting at 9:30 p.m. Mr. Wilson welcomed and encouraged everyone to attend.

Councilmember Polanski reported that last Thursday she attended the VTA PAC meeting where the city groups were asked to discuss prioritizing Measure A priorities and she was hoping to get feedback from staff as well as Vice Mayor Dixon that she could share on June 10. Councilmember Polanski thanked the City Manager for the overview on the July 4th celebration and requested that a report reviewing the reasons for charging for some of the events and the successes we had last year be on the next Council agenda or the following agenda (first or second meeting in June).

Mayor Esteves thanked the Milpitas Recreation Services and the Children’s Discovery Museum for sponsoring Circus Chimera at the Sports Center, commenting that he enjoyed serving as a guest Ring Master; congratulated the City for being named “Tree City USA” for the second year; congratulated staff and the Dempsey neighborhood for working on “Plant a Flower” last Saturday and invited everyone to stop by and view the garden; and congratulated the chartering of the Milpitas Vietnamese Lions Club.

AGENDA

City Manager Wilson requested items 4 and 5 be removed from the agenda and continued to June 15, 2004. City Attorney Steve Mattas clarified that item 4 be continued to June 1, 2004, noting that the Council had requested all three items come back at the same time and he would be prepared to present all three items on June 1st. Councilmember Gomez, referring to item 4, asked that staff be prepared for discussion as to whether or not the weekly updates are a matter of public record.

MOTION to approve the agenda as amended by the removal of items 4 and 5.

M/S: Livengood, Gomez.

Ayes: 5

CONSENT CALENDAR

Mayor Esteves inquired if anyone wished to make any changes to the Consent Calendar. There were no requests.

MOTION to approve the Consent Calendar, items with asterisks on the agenda, as submitted, in accordance with the staff recommendations.

M/S: Gomez, Livengood.

Mayor Esteves asked that his abstention be shown on item 8. Mayor Esteves requested that the Arts Commission (item 3) come back at its leisure with an amendment to include a proposal to work on a percentage of development fees/costs that would be allocated to public art. The maker and second to the motion agreed to include the Mayor’s direction to the Arts Commission with the approval of the Consent Calendar.

VOTE ON MOTION, including the direction to the Arts Commission: Ayes: 5

- *1.
Russell School
Leadership Program** Approved a \$500.00 contribution to the Russell Middle School Leadership Program CASL Leadership Camp from the Council's Community Promotions budget.
- *2.
High Speed Rail System** Approved Resolution No. 7403 and letter to High Speed Rail Authority Board supporting the California High-Speed Rail Authority's conclusion to use one of the two southern alignments (Pacheco Pass or Diablo Range) into the San Francisco Bay Area for the state's proposed high-speed rail system
- *3.
Arts Commission Work Plan** Approved the Arts Commission's Work Plan with direction to amend the Word Plan to . working on a proposal to require a percentage (or amount) of development fees/costs to be allocated for public art.
- 4.
PolicyCity Records** *Continued to June1, 2004.*
- 5.
Unrepresented Employees** *Continued to June15, 2004.*
- *8.
Freestanding Signs in Town
Center Zoning District** Waived full reading of the sign ordinance and adopted Ordinance No. 124.26 (Zoning Ordinance Text Amendment No. ZT2003-5), amending Title XI, Chapter 30 of the Milpitas Municipal Code to increase the number of free standing signs in the Town Center Zoning District. (Mayor Esteves abstained on this item.)
- *9.
Water/Recycled Water Rates
Sewer Rates
Solid Waste Collection**
 1. Waived full reading of the ordinances.
 2. Adopted Ordinance 120.42 amending sections 6.05, 6.09, 6.10, 6.11, 6.13, 6.14, 6.15, 6.16 and 6.17 of Chapter 1, Title VIII, of the Milpitas Municipal Code setting water and recycled water rates, penalties and service charges for non-payment of water service bills, tampering with City property, illicit fire use, and updating construction water program provisions.
 3. Adopted Ordinance 208.39 amending sections 6.01, 6.03, and 6.04 of Chapter 2, Title VIII, of the Milpitas Municipal Code setting sewer rates and penalties and service charges for non-payment of sewer service bills.
 4. Adopted Ordinance 48.15 amending section 9 of Chapter 200, Title V, of the Milpitas Municipal Code setting penalties and service charges for non-payment of solid waste collection bills.
- *10.
Buddhist Temple Expansion
(Project No. 3120)** Adopted Resolution No. 7404 authorizing the lot line adjustment for Buddhist Temple expansion at 50 South Main Street (Project No. 3120).
- *11.
Landscaping and Lighting
Maintenance District No. 98-1** Adopted Resolution No. 7405 directing the preparation of the Annual Engineer's Report for Landscaping and Lighting Maintenance District No. 98-1, Sinclair Horizon, Program No. 9479.
- *12.
Landscaping and Lighting
Maintenance District No. 95-1** Adopted Resolution No. 7406 directing the preparation of the Annual Engineer's Report for Landscaping and Lighting Maintenance District No. 95-1, McCarthy Ranch, Program No. 9474.
- *13.
Local Government Sharing
Program (AB63)** Adopted Resolution No. 7407 authorizing the City Manager to execute an agreement with the Franchise Tax Board governing participation in the Local Government Sharing Program (AB63), which allows FTB to extract certain information from the 2003 State income tax files and transmitted the records to the local agencies.
- *14.**
 1. Adopted Resolution No. 7408 approving an agreement with the California Highway

Firing Range	<p>Patrol for joint use of the firing range.</p> <p>2. Authorized the City Manager to execute agreement with the California Highway Patrol, to continue in an agreement with the City of Milpitas in order to pay their share (\$3,000), plus an additional \$50 per month to off-set maintenance costs, subject to approval as to form by the City Attorney.</p>
*15. ABAG Power Windup Agreement	Adopted Resolution No. 7409 authorizing the City Manager to execute a Windup Agreement with ABAG POWER and receive distributions of funds as they become available (the City's proportional share of this claim [including interest] is \$316,870).
*16. Street Sweeping Services	Authorized the City Manager to amend the current agreement for the collection and disposal of solid waste with BFI Waste System of North America, Inc. to provide for immediate (within 30 days) street sweeping services.
*17. Kennedy Subdivision (Project No. 3159)	<p>1. Approved the improvement plans and the final map for Kennedy Subdivision, Kennedy Drive (Tract No. 9560) (Project No. 3159).</p> <p>2. Authorized the City Manager to execute the secured Subdivision Improvement Agreement, subject to the approval as to form by the City Attorney.</p>
*18. HVAC Maintenance	Authorized the City Manager to execute an amendment to extend the agreement one additional year with the Pacific Air Solutions to May 1, 2005, in an amount not to exceed \$24,000.00, for annual HVAC maintenance at the Police/Public Works building, subject to approval as to form by the City Attorney.
*19. Household Hazardous Waste Collection	Authorized the City Manager to execute the First Amendment to the Countywide Household Hazardous Waste Collection agreement with the Santa Clara County Department of Environmental Health, subject to approval as to form by the City Attorney.
*20. Senior Housing and County Health Center EIR (Project No. 8103)	Authorized the City Manager to enter into the Consulting Services Agreement with LSA Associates, Inc. in the amount not to exceed \$135,000, for the Senior Housing and County Health Center EIR (funding to come from Project No. 8103), subject to approval as to form by the City Attorney.
*21. Buddhist Lotus Society (Project No. 3120)	Approved the Permittee Dedication and Improvement Agreement with Avatamsaka Buddhist Lotus Society (Project No. 3120), and authorized the City Manager to execute the same, subject to the approval as to form by the City Attorney.
*22. Various CIP Projects Consultation	Authorized the City Manager to execute the agreement amendment with GSS Consulting, in the not-to-exceed amount of \$124,000, for various CIP projects, subject to approval as to form by the City Attorney.
*23. Exercise Equipment (Project No. 8053)	Awarded the bid for the purchase of three pieces of commercial exercise equipment (Project No. 8053) to the lowest bidder, LifeFitness, in the amount of \$10,842.50.
*24. Police Department Senior Management Recruitments	Authorized the City Manager to execute an agreement with Hargis & Associates, in an amount not to exceed \$10,400 for the administration of examinations for Police Captain and Police Commander, subject to approval as to form by the City Attorney.
*25. Miscellaneous Vendors	<p>Approved the following purchase requests:</p> <p>1. \$14,700.00 to ThyssenKrupp Elevator Corp. for annual elevator service and preventive maintenance at the Police/Public Works building and City Hall. (Funds are available from the Public Works Department operating budget for this service.)</p>

2. \$5,685.00 to Pacific Air Solutions for replacing three 120 gallon hot water heaters including the building of a raised support system to elevate new tanks from the concrete floor and new plumbing connections at the Sports Center. (Funds are available from the Public Works Department operating budget for this service.)
3. \$29,000.00 to Enviro Commercial Sweeping for street and parking lot sweeping services through the end of June for the Street Maintenance Function. Beginning in July, these sweeping services may be incorporated in the solid waste franchise agreement. This amount is the final monthly payments to the current contractor. (Funds are available from the Public Works Department operating budget for this service.)
4. \$10,374.00 to ACCO Engineered Systems for annual HVAC equipment and building automation computer system service and preventive maintenance for the City Hall building for the Facility Maintenance Division. (Funds are available from the Public Works Department operating budget for this service.)

PUBLIC HEARINGS (None)

JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

**RA1.
CALL TO ORDER** Mayor Esteves called to order the regular meeting of the Milpitas Redevelopment Agency, meeting jointly with the City Council, at 8:00 p.m.

**RA2.
ROLL CALL** Present were Mayor Esteves, Vice Mayor Dixon, and Agency/Councilmembers Gomez, Livengood, and Polanski.

**RA3.
MINUTES** MOTION to approve the Redevelopment Agency minutes of May 4, 2004, including joint meeting with the City Council, as submitted.

M/S: Gomez, Polanski

Ayes: 5

**RA4.
AGENDA** MOTION to approve the Agenda and Consent Calendar as submitted.

M/S: Gomez, Livengood.

Ayes: 5

Agency/Councilmember Livengood said he would be abstaining from the discussion and vote on items RA5 and RA6 and left the Council chambers.

**RA5.
MEMORANDUM OF
UNDERSTANDING
KB HOME SOUTH BAY, INC.** Assistant City Manager Blair King reviewed the Memorandum of Understanding (MOU) between KB Homes and the Milpitas Redevelopment Agency, the City, and the County of Santa Clara to provide affordable housing for the KB Elmwood development. Mr. King reported that KB had agreed to the MOU, today the Board of Supervisors unanimously approved it, Jeff McMullen, Vice President of KB Homes was present in the audience along with Larry Klamecki, Special Projects Manager for Santa Clara County, and they were available to answer questions relating to their organizations. Mr. King further reported that the MOU requires the development of 110 deed restricted, moderate-income home ownerships units (85 condominiums, 15 townhomes, and 210 single-family detached homes) and a contribution of \$6 million (\$5 million from KB and \$1 million from the County) towards the development of a 98-unit low-income senior housing project proposed for North Main Street, resulting in the development of 208 affordable units (allowing the project to achieve an approximate 30 percent affordability factor). Mr. King explained that the MOU requires the Agency construct the senior affordable apartments within five years and six months of the close of escrow for the Elmwood property or provide the County with the \$5 million KB contribution; staff felt the deadline date could be met.

MOTION to:

1. Adopt Resolution No. RA220 of the Redevelopment Agency authorizing the execution of a Memorandum of Understanding to provide Affordable Housing on the Elmwood Property.
2. Adopt Resolution No. 7401 of the City Council of Milpitas authorizing the execution of a Memorandum of Understanding to provide Affordable Housing on the Elmwood Property.

M/S: Dixon, Polanski.

Ayes: 4 Abstain: 1 (Livengood)

**RA6.
MID-PENINSULA HOUSING
COALITION
SENIOR HOUSING PROJECT**

Assistant City Manager King reported with the adoption of the MOU with KB, the City, the Agency, and the County, staff was recommending the Council/Agency enter into an Exclusive Negotiation Agreement with Mid-Peninsula Housing Coalition to develop concepts for the project and to bring a proposal back to the Council. Mr. King commented that Fran Wagstaff, Executive Director of Mid-Peninsula, was present in the audience, Mid-Peninsula had pledged a \$5,000 non-refundable deposit that would be applied against the development costs if a subsequent development agreement results from this, the period of time extends to the later part of November, and staff was confident an agreement could be reached in that time.

MOTION to adopt Joint Resolution Nos. 7402 and RA221 of the City Council and Milpitas Redevelopment Agency to authorize the City Manager/Executive Director to enter into a period of Exclusive Negotiation with Mid-Peninsula Housing Coalition of Redwood City for the development of an affordable senior housing project on Assessor Parcel Number 022-08-041, at 163 North Main Street.

M/S: Dixon, Gomez.

Ayes: 4 Abstain: 1 (Livengood)

Agency/Councilmember Livengood returned to the dais.

**RA7.
APTON PROPERTIES, LLC
MOU**

Principal Housing Planner Felix Reliford reported the item before the Council/Agency was a Memorandum of Understanding between the Redevelopment Agency and Apton Properties providing grant and loan assistance to facilitate the construction of 19 deed-restricted, affordable housing units consisting of 9 very low income units and 10 moderate-income units. Mr. Reliford further reported the MOU commits \$722,000 in grants, \$130,560 for a 20% reduction in City fees, and a \$378,000 construction loan to the developer for affordable housing assistance; upon full build out and sale, the project would produce approximately \$156,800 annually in new tax increment, provide 78 jobs during construction, and provide 96 new residential units, of which 19 will be deed-restricted affordable units. Mr. Reliford noted the developer was present in the audience.

Mayor Esteves passed the gavel to Vice Mayor Dixon and left the Council Chambers.

City Attorney Steve Mattas stated that the Mayor was abstaining on this item because he owns property that may be within the 500 ft. range.

MOTION to adopt Resolution No. RA222 of the Redevelopment Agency approving a Memorandum of Understanding by and between the Redevelopment Agency of the City of Milpitas and Apton Properties, LLC.

M/S: Gomez, Polanski.

Ayes: 4 Abstain: 1 (Esteves)

Mayor Esteves returned to the dais.

**RA8.
LIBRARY PROGRESS**

Assistant City Engineer Greg Armendariz presented an update on the progress of the Library Project reporting that staff was currently involved in the selection process for the design

REPORT (PROJECT No. 3394) architect. Mr. Armendariz further reported that nine proposals for the architectural design of the Library building were submitted as of the May 10, 2004, deadline, several of which were from prominent Bay Area design architectural firms and the interview process began today. Mr. Armendariz said background checks and visiting consultant offices and consultant projects was next with a report to the Library Subcommittee on June 14; the Subcommittee would review the short list of firms and would be making a recommendation to the Council on the finalist. Mr. Armendariz further stated staff would continue through the end of June negotiating the scope with the firm selected and bring the contract to the July meeting or first meeting in August for Council approval, at which time the consultant would be available for questions from the Council.

Agency/Councilmember Livengood commented that one of the issues that always comes up with these firms was sometimes the people who give the presentations are not the people you work with after the contract is approved; he thought a clear expectation was needed as to who would be the contact for staff and who the Council would have contact with.

Mayor Esteves said in addition to the contacts, he would like to see an estimate of their schedule of work on the project.

Vice Mayor Dixon commented that the City had a “lessons learned” format and the consultants should be made aware of it.

Mr. Armendariz responded that staff had been very open with the process and the City’s expectations so that the consultants understood not only staff’s expectations but the expectations of the Council.

Vice Mayor Dixon commented that it really has to do with the contract, a lot had been learned, and she was hopeful there wouldn’t be the same problems this time around. Vice Mayor Dixon inquired about the current available funding for the Library commenting there was some confusion about the TOT (Transient Occupancy Tax) at the Library Advisory Commission meeting last night. Vice Mayor Dixon said the TOT was never meant to be used to build the Library; it was to assist with the Library but not the building and asked how much had been expended so far. City Manager Thomas Wilson responded he didn’t have the exact number and could get back to the Council with it but in addition to staff time commitments, there were some expenses associated with the programming (Ripley Associates) and some initial expenses for site acquisition, appraisals, and preservation of the former Senior Center in the project. Mr. Armendariz added that staff would provide the exact number with the next report.

MOTION to note receipt and file Library Project Progress report.

M/S: Polanski, Livengood.

Ayes: 5

***RA9.
Fire Department Apparatus**

Authorized the Redevelopment Agency to purchase and equip one Ladder Truck and one Fire Engine to conform to the Midtown Specific Standards.

***RA10.
Midtown and Related
Improvements for Main Street**

Authorized the City Manager to execute the agreement amendment with Swinerton Management & Consulting in the amount of \$600,000, to perform additional project management and coordination services for the Midtown and related improvements for Main Street, including the library project, subject to approval as to form by the City Attorney.

***RA11.
Abel Street
Midtown Improvements**

Authorized the City Manager to execute the agreement amendment with JMH Weiss Inc. in the amount not to exceed \$304,000, to include the design of street improvements to Serra Way between Calaveras and Main, and Curtis Street between Abel and Main, subject to approval as to form by the City Attorney.

**RA12.
ADJOURNMENT**

There being no further Redevelopment Agency business, Mayor Esteves adjourned the Redevelopment Agency meeting at 8:41 p.m.

The City Council meeting continued.

UNFINISHED BUSINESS

**6.
Odor Control Update**

Principal Civil Engineer Darryl Wong reviewed activities and key events that had occurred during the month including site visits to Zanker and Cargill to observe odor control best management practices and to discuss odor control activities. Mr. Wong shared information from one of the locations reporting that Cargill was working on a contingency plan and shared two photographs from Cargill showing pond A18 water level as of May 11, 2004, and the proposed location of the gated emergency inlet from Coyote Creek to Pond A18. Mr. Wong further stated that with the warm weather coming, staff was gearing up for some outreach activities including a flyer in the Milpitas Post and distribution in June to every home of door hangers on how to report odors. Mr. Wong noted that in March 23 complaints were logged, 23 in April, and so far in May, six complaints had been logged. Mr. Wong thanked Bill Jones and Dwight Herring of BFI, who were present in the audience.

MOTION to note receipt and file the Odor Control Comprehensive Action Plan progress report.

M/S: Dixon, Livengood.

Ayes: 5

NEW BUSINESS

**7.
Code Enforcement Program**

Acting Planning and Neighborhood Preservation Director Tambri Heyden, along with Senior Housing & Neighborhood Preservation Specialist Gloria Anaya, presented the proposal to expand the City's Code Enforcement Program. Ms. Heyden began by sharing examples of recent efforts to improve the overall appearance of the City. Ms. Heyden reported that the Council approved the Neighborhood Beautification Ordinance in September 1999, effective February 1, 2000, to go beyond violations that go beyond health and safety hazards and establish a minimum level of upkeep and to address unsightliness on both private and public properties, which was a major step towards beautification, and certain expectations were established to address concerns at that time. Ms. Heyden reviewed Phase I that involved substantial education and outreach, included complaint-driven enforcement of the ordinance and the mailing of courtesy notice violations; Phase II instituted an administrative citation process, continued outreach and education, and amendments to the Zoning Code. Ms. Heyden commented on the program's successes reporting that from March 2003 to March 2004, staff closed 96 percent (556 of 582) of the Neighborhood Beautification Ordinance-related customer service requests; 10 percent (62) were abated through citations; and two of the 62 citations were not to be abated through that process. Ms. Heyden further commented on remaining challenges stating that enforcement was only done on weekdays, there was intermittent compliance and recurring violations, labor-intensive notifications for certain violations that should be addressed immediately, a proliferation of temporary signs on public as well as private property, and a lack of citation power for temporary sign violations. Ms. Heyden outlined proposed solutions including transition from a complaint driven to a pro-action enforcement, the addition of weekend enforcement, amendments to the Neighborhood Beautification Ordinance, the Zoning Code, and Sign Code to reduce the number of days of notification from 30 to 15 for certain violations, to provide for the ability to levy a fine without notice for violations that create health and safety dangers or are recurring, intermittent violations, to provide for an administration citation process, and to require a no-fee application process for temporary signs.

Vice Mayor Dixon asked because this had always been complaint driven, would there now be code enforcement staff driving through the City commenting that she was trying to visualize

how it would be done effectively. Ms. Heyden responded better use of all personnel could be made and staff was looking at collaborating with other departments with field personnel to increase the number of eyes looking for violations and launching an educational program with those staff members on the kinds of things to look for. Vice Mayor Dixon said she was glad to see that being addressed. City Manager Wilson commented that digital cameras were incredible and the opportunity to just take a quick photo that could be worked on during the week was really a solution; many City departments use cameras like that for their own work and it would be easy to spend a few hours documenting a whole series of things that could be addressed during other non-weekend time. Vice Mayor Dixon said she thought this was great, was glad it was at this point, and it was important for the community to know that this was phased in and public education was followed through.

Councilmember Polanski commented that during the election season, the City has an excellent process for abating signs and inquired if the same kind of process was being considered. Ms. Anaya responded absolutely, the ordinance provides a process right now for doing that for a sign in the public right of way. Councilmember Polanski further stated that she had noticed in a number of shopping centers people are now outside different stores with all kind of boxes of knickknacks they are selling and inquired if this ordinance would cover some of that. Ms. Anaya responded if their use permit doesn't allow that kind of activity it would be considered outside storage and it wouldn't be allowed. Councilmember Polanski asked if the violation happened on the weekend, how would it be checked out. Ms. Anaya responded it would require a photograph and could be incorporated, along with the signs, as one of the things to look for in the training of whoever is doing weekend enforcement. Councilmember Polanski commented that the Community Advisory Commission (CAC) has been very actively involved in this for several years and was involved in many of their discussions, they wanted it phased in with the educational portion; she thought an excellent job had been done in getting that educational component out about the neighborhood beautification, and she hoped the CAC would continue to be involved with how this is working.

Councilmember Gomez inquired what temporary signs are legal right now. Ms. Anaya responded she was not sure but the problem staff was seeing was only freestanding signs that have been approved by the Planning Commission are legal and all others are unpermitted. Councilmember Gomez inquired about garage sale signs. Ms. Anaya said garage sale and open house directional signs have their own section of the Code. Councilmember Gomez asked if registration of temporary signs is required, would people be required to come in to get approval before they put those signs out. Ms. Anaya responded right now the ordinance allows a sign advertising a special event or grand opening four times a year for 14 consecutive days; staff needs some help in terms of enforcing those particular signs because staff has no idea when the 14 days begins; businesses would be asked to fill out an application, possibly on the City's web site to make it easier, that will help staff to keep track of the signs.

Councilmember Livengood said he had a different perspective on this; he had received complaints about the Neighborhood Beautification Ordinance but all have been about the way some people maintain their property; he hadn't heard from anybody upset about an open house sign but rather about weeds or parked cars and to him that had a much greater impact on the viability or value of a neighborhood than a real estate sign on the corner. Councilmember Livengood further stated he didn't like some of these signs but when you put this into perspective and when you talk about property values, when you live next door to a house with weeds in the front yard, that had a greater impact on property values than a real estate or garage sale sign; he would rather see more emphasis placed going into the neighborhoods and dealing with those problems. Councilmember Livengood further stated that thought the Neighborhood Beautification Ordinance was a good program, he supported it when it was adopted but was concerned that the focus now was on signs and creating a sort of sign police; he thought there were better things to do than worry about signs such as focusing on those people who won't take care of their homes, have weeds for a front lawn, fences that are down, these were quality of life issues; he understood the issue of illegal signs, they were

an annoyance but if we are supposed to be in a time of limited resources, questioned why we are not talking about issuing citations on business owners. Councilmember Livengood inquired about the specific changes and the status of real estate open house signs, asking if they will have to get a permit. Ms. Anaya responded no changes were proposed to the requirements for garage sale or open house directional signs but staff did want to make sure it was understood where the signs can be legally placed. Councilmember Livengood inquired where a real estate sign could be placed and where not. Ms. Anaya responded she had sent out an informational letter with a sketch showing exactly where they are allowed stating that they cannot block the sidewalk, cannot be on the medians, as long as they do not infringe on the sidewalk, and they can be placed on private property or in the area between the curb and the sidewalk.

Mayor Esteves said he thought un-kept homes and reducing the notification period from 30 to 15 days if specific health and safety dangers were being addressed and asked for some examples of specific violations related to health and safety issues so that when they are cited, it is consistent. Ms. Heyden described a scenario where there could be a temporary sign that was not structurally sound that could become a hazard in a windy situation. Mayor Esteves suggested there be a list of violations that are considered health and safety hazards so there is consistency. City Manager Wilson commented that could be done but there was a whole series of these things could be health and safety issues.

Mayor Esteves said he wanted good definitions so the City was defensible and inquired about evening enforcement and pointed out that A-frame signs in San Jose must be removed after sunset or become a violation. Mayor Esteves inquired how staff would go around the neighborhoods for sampling problem areas so as not to pick on any one neighborhood. Ms. Anaya responded one of the reasons for moving from a complaint driven to a pro-active process was not to give the impression that any one neighborhood was being targeted; referring to the success of the vehicle abatement program, Ms. Anaya said the City was divided up into six equal parts; the sign abatement could take on the same kind of process by dividing the City into six equal parts which would be rotated each year. Mayor Esteves, referring to the registration of temporary signs, inquired if the realtors A-frame signs and garage sale signs would be excluded. Ms. Anaya said that was correct and currently when staff encounters a garage sale sign after the dates of the sale, staff would contact the resident and request they remove all their signs.

Mayor Esteves inquired if additional fiscal impact was expected (overtime, etc.)? Ms. Anaya said staff would do its best to utilize whatever field staff can assist in identifying and taking photos and then Code Enforcement staff would do the follow up work with notices and citations. Ms. Heyden added that staff was looking at existing staff and, as an example, the way the Lend-A-Tool Program is staffed on Saturdays might be done differently so the time spent on that could be channeled to this effort. Mayor Esteves asked if taking a picture was legal. City Attorney Mattas responded it was legal to take a picture of a violation, which would establish an immediate record; and there were limitations to a person's ability to protect their own private space.

Vice Mayor Dixon clarified that not just the Sign Ordinance was being looked at but also an amendment to the Neighborhood Beautification Ordinance; banners with no regulations were also being addressed; and with respect to the issue of political signs, there was a 4 x 8 political sign on North Milpitas Blvd, almost to Montague, that had been up since February. Vice Mayor Dixon further commented with respect to the issue of overgrown vegetation, she had an instance where some of her neighbors complained to her, the Fire Department came out, and asked do residents have to be specific as to where the weed problem actually was (front or back yard). Ms. Anaya responded she believed the Fire Department would only address what could be seen from the street. Mr. Mattas added it was not just that there was an issue with weeds in the back yard that weren't particularly attractive but if it was a fire hazard, that could be brought to the City's attention to see if it would be proper to get an inspection warrant. .

Councilmember Polanski, following up on Councilmember Livengood's statements, said a temporary tarp being placed on property as a fence can also be offensive to others in the neighborhood (she had reported a fence that had been down for about four years); and inquired how Code Enforcement made sure people keep up their fences as well as their yards. Ms. Anaya responded if it could be seen from the public right-of-way, it can be addressed under the NBO; a misconception was that the NBO does not give authority to tell people to install a new lawn – as long as it is mowed, it is not a violation.

Mayor Esteves thanked Paul Stewart for sending him a copy of the San Jose ordinance regarding real estate signs and asked Mr. Stewart if he'd like to comment.

Paul Stewart, Executive Director for the Santa Clara County Association of Realtors, thanked Gloria Anaya for talking with him about this and said any time they see something that would be restrictive for the real estate business, it causes them concern;. Mr. Stewart asked for confirmation that real estate signs are exempted, under Section 3.07 of the proposed Sign Ordinance. Ms. Anaya responded that was correct. Mr. Stewart further stated he wanted to let the Council know that when he was first hired by the Association, he implemented a sign education program for their members in response to issues because they would get calls from code enforcement from the different cities; described a program he put together where a broker or realtor can anonymously report a violation to him when there is a violation and how it is handled and commented that he always send a copy of the City's Sign Ordinance. Mr. Stewart said he was also going to invite Ms. Anaya to the North Valley Marketing meeting to address the sign issue. Mr. Stewart said they would also like to work with staff as this is developed and as it impacts real estate signs; another thing he thought would be helpful would be to use the San Jose Ordinance; and asked that staff clarify the information and the drawing that was sent out regarding temporary open house signs for realtors.

Frank De Smidt expressed concern that some of what he had heard tonight will have a major impact on businesses and requested the Council refer this matter to the Economic Development Commission to study and provide a report and input to the Council.

MOTION to expand the City's code enforcement program by proceeding with amendments to the Neighborhood Beautification Ordinance, Zoning Code and Sign Code to reduce notification timeframes, add administrative citation abilities, enable fines without notice for certain violations, and require approval for temporary signs; transition from complaint-driven enforcement to active violation identification and institute weekend enforcement and to get input from the Commissions that have been involved (the Community Advisory Commission and the Economic Development Commission).

M/S: Polanski, Dixon.

Ayes: 4

Noes: 1 (Gomez)

ADJOURNMENT

There being no further Council business, Mayor Esteves adjourned the City Council meeting at 9:45 p.m.

Gail Blalock, City Clerk

The foregoing minutes were approved by the City Council as submitted on June 1, 2004.

Gail Blalock, City Clerk

Date

APPROVED MINUTES
CITY OF MILPITAS

Minutes:	Adjourned Joint Meeting of Milpitas City Council and Milpitas Redevelopment Agency)
Date of Meeting:	May 11, 2004
Time of Meeting:	6:30 p.m. (Closed Session) 7:00 p.m. (Regular Session)
Place of Meeting:	City Hall Council Chambers, 455 E. Calaveras Blvd.

ROLL CALL

Mayor Esteves called to order the adjourned joint meeting of the Milpitas City Council and Milpitas Redevelopment Agency at 6:30 p.m. Present were Mayor Esteves, Vice Mayor Dixon, and Councilmembers Gomez, Livengood, and Polanski.

PLEDGE

Mayor Esteves led the Council and audience in the pledge of allegiance.

CITIZENS FORUM

Mayor Esteves invited members of the audience to address the Council on any subject not on the agenda.

Rob Means, Milpitas, referring to an article in the San Jose Mercury News the past weekend on the projected cost and traffic relief of the proposed BART extension to San Jose, said he thought the funding everyone was expecting for this project just might not be there and gave a copy of the article to each of the Council Transportation Subcommittee members.

AGENDA

MOTION to approve the agenda as submitted.

M/S: Gomez, Polanski.

Ayes: 5

**PUBLIC HEARING
FISCAL YEAR 2004-2005
BUDGET**

City Manager Thomas Wilson reported the presentation of the 2004-2005 Budget would begin with a general overview, the operating departments and divisions would make their presentations, the Capital Improvement Program would be reviewed followed by Council discussion and direction. Mr. Wilson explained the 2004-05 Budget was developed to assist the City Council in achieving the Council's vision for Milpitas and to ensure the delivery of quality, timely and cost effective services to the community while continuing to meet future fiscal challenges in the most professional and responsive manner. Before getting into the actual budget, Mr. Wilson said he wanted to place the entire economic situation in context because all the work that the Council would see tonight was done against the backdrop of not only the needs of Milpitas, but the particular unique circumstances we are facing as a State and as a region with the State's economic crisis and a lot of questions that have not been answered.

Overview

Mr. Wilson reviewed the climate in which the budget was prepared commenting that the country is at war and also in recovery from a recession that severely impacted California, especially Northern California. Mr. Wilson noted that while Southern California economically appears more positive, Northern California has been caught in the depths of this recession and on many occasion hasn't had the same recovery as the rest of the State; Milpitas in the past year had really seen the bottom in its losses, however, sales tax and the transient occupancy tax were beginning to stabilize. Mr. Wilson commented on the job loss that continues to be a problem and, again, Northern California continues to be higher than the national average. Mr. Wilson commented on events that took place this past year such as the recall of the Governor, changed leadership of the State, efforts by the new Governor to stabilize the short-term State debt, and how it all impacted Milpitas. Mr. Wilson reviewed the proposal to take ¼ of Milpitas' sales tax as a security to finance the State's debt noting that as Milpitas approaches the new year, \$12 million was projected in sales tax revenue, one-fourth of which will be diverted and there was a risk of losing \$3 million more.

Mr. Wilson reported that the Governor has been working with the major entities in the State to come up with a two-year solution of taking a certain amount of money and insulating it so that

it can't be taken again, but that solution was not in place; the budget before the Council was being presented with some uncertainties but it was balanced; however, staff may need to come back to the Council to make appropriate adjustments when the State impact is known. Mr. Wilson went on to describe the Governor's proposal that was before the League of California Cities for a two-year commitment of \$350 million from cities, \$350 million from counties, and \$250 million from redevelopment agencies across the State; for the City of Milpitas, it could mean \$1.5 to \$4 million out of the General Fund and about \$3.5 million from the Redevelopment Agency; at this point the Governor is promising he will support a Constitutional amendment that will stop any future take-aways but a lot of details needed to be worked out and there were no guarantees the Legislature will support it, but there was some hope. Mr. Wilson further described how staff had been working to reduce costs, the careful evaluation of positions and at the same time maintaining services in the community; in the Redevelopment Agency, some very strong opportunities were opened up with the restructuring of the Agency.

Mr. Wilson commented that the State's problem needed to be fixed for long-term viability but tonight the Council would see a balanced budget, a very frugal budget that does use all of the City's revenue sources, does shift monies and generate support in areas to the General Fund from the Redevelopment Agency (\$7.5 million of reserves) in order to meet commitments; in general, there were some increases in personnel costs due to negotiated salary increases; other important elements in addition to salaries were increases in medical benefits and workers compensation and increased PERS costs; and no additional positions were being requested.

Mr. Wilson described the budget process that included continuous monitoring of the City's financial status and early planning through a series of collaborative meetings with Departments/Divisions to prioritize resource needs in order to continue providing City services in an efficient and effective manner, review of staffing needs, and a comprehensive review of performance indicators, accomplishments, and objectives. Mr. Wilson said the Budget Plan developed proposed cost savings and judicious use of some of the reserves and policy direction to continue to provide a high level of City services in the most efficient and effective manner, to maintain a reserve policy for the General Fund that will ensure against economic uncertainties, to complete the planning and design for the library, to continue to focus on Redevelopment projects and funding that will provide for the economic stability of the community and implementation of the Midtown Specific Plan, and to encourage commercial and residential development focused in the Midtown Plan area that will center on the new light rail system and future BART system to alleviate traffic congestion.

Mr. Wilson reviewed Budget highlights that included continuing to underfill many non-public safety positions to achieve a cost savings of over \$3.5 million and providing funding for MOU negotiated increases and a proposed 4.6 percent salary increase for Unrepresented employees, which was an average of all Memorandums of Understanding.

Mayor Esteves inquired if the \$3.5 million savings in labor was the same as last year. City Manager Wilson responded there was some variation but it was about the same. Mayor Esteves asked how many frozen positions were there. Mr. Wilson responded about 50 vacant positions, all non-public safety. Mr. Wilson commented that there were some public safety positions vacant right now but they were under recruitment or will be. Mayor Esteves asked the percentage of \$3.5 million compared to the total personnel cost of non-public safety expressing concern that if it was a big percentage, services might be in jeopardy. Mr. Wilson said staff had been very aggressive in managing those vacancies and every unit could use another person. Finance Director Emma Karlen reported, in response to the Mayor's question about personnel costs, that of the \$60 million budget, public safety was \$33 million and \$27 million was for non-public safety. Mayor Esteves said later on he would like the number of bodies for public safety compared to non-public safety and asked how much the 4.6% for unrepresented was. Ms. Karlen said the 4.6% amounted to a little over \$225,000.

Vice Mayor Dixon commented that the transferring of the \$5 million that was set aside for the library was done before the Redevelopment Agency was extended and asked if the \$7.5

million (to cover the deficit) took into account the that transfer (\$5 million) back. City Manager Wilson responded regarding the use of reserves, about \$7.5 million, \$5 million of that was the \$5 million that was originally removed from a capital reserve General Fund to the specific building of the library; the other \$2.5 million would come from the PERS reserve. Vice Mayor Dixon commented that when comparing Milpitas to other cities in the area, she thought it was important to note that this was what she considered to be a soft landing. Mr. Wilson commented that the PERS increase has hit some cities extremely hard, the \$5 million was generated by not spending the reserves in 2001 and it was contributed to a capital fund when the City was facing a situation of not having the ability to fund the library and other capital projects; however, since the ability to do that had been secured, it was appropriate to move those monies back to the General Fund and he considered that a soft landing.

Councilmember Gomez inquired if the \$3.5 million included the natural vacancies for public safety. Mr. Wilson said he thought it was a non-public safety number; there have been some vacancies in Police that have generated some additional savings; well over \$4 million was saved through turnovers last year; and this was just the non-public safety portion, noting that there had not been a lot of retirements in non-public safety.

Mr. Wilson reported that \$3.8 million had accumulated from the increase in the TOT and since it was no longer needed to build the library, staff was proposing to have that fund dedicated for some type of library use. Mr. Wilson commented that the library, as a special district, was being threatened by a reduction in hours and services; that would be a good place where the City could supplement library hours. Councilmember Gomez asked what did the voters buy in to. Mr. Wilson responded it was a series of commitments to the library but wasn't just construction and was an advisory measure. Vice Mayor Dixon said at that time it was portrayed to the community as advisory, she remembered asking the Council the question "could a future Council change their mind" and the answer at that time was yes, because it was only an advisory measure.

Mr. Wilson proceeded to review the Budget Highlights that included continuing to underfill many non-public safety positions to achieve cost savings of over \$3.5 million; provide funding for MOU negotiated increases and a proposed 4.5 percent salary increase for unrepresented employees; implement financial strategies to mitigate the loss of revenue due to the State's budget deficit without reduction of services; implement economic development strategies and policies focused upon generating new and/or enhanced revenues; careful evaluation of infrastructure and programming needs in the five-year capital improvement program to fund and deliver the Council's highest priority projects; conservatively utilizing some of the unreserved fund balance to offset General Fund revenue shortfall while maintaining a contingency reserve level at 15 percent of the budget appropriations (transfer of \$5 million from the Library Fund and \$2.5 million of PERS Rate Stabilization Reserve); and continue to maintain a high general credit rating.

Finance Director Emma Karlen reviewed projections for General Fund revenues, commented that based on recent property tax growth trends provided by the County Assessor, a 4 percent increase was projected for next year, however, because of the State budget deficit at the time the City's budget was prepared, there was an indication that the State would require about \$1 million from the General Fund transferred to the Educational Relief Augmentation Fund (ERAF shift) and so staff factored that in and projected \$9.4 million net revenue for next year. Ms. Karlen said General Fund sales tax revenue projections were revised down in the current year but for next year a 3 percent growth was projected as well as a slight increase for the Transient Occupancy Tax (TOT). Ms. Karlen reviewed the proposed Fiscal Year 2004-05 total annual budget of \$125,704,007, which represented a 26 percent increase over Fiscal Year 2003-04 with increased in all categories; proposed salaries and benefit changes; proposed services and supplies changes; and proposed capital outlay changes. Mr. Karlen further reviewed Debt Service Expenditures, expenditures by department, the proposed General Fund Budget totaling \$67,740,008, and changes in the General Fund Budget from FY 2003-04 of approximately 12.7 percent. Mayor Esteves commented that the City also contributed to

employees' benefits and inquired how much on the average per employee was the increase. Ms. Karlen responded about 10-11 percent per year.

Ms. Karlen further reviewed General Fund revenues versus expenditures; the City's economic trends; and the Unreserved, Undesignated Fund Balance. Ms. Karlen summarized that the overall budget envisioned a conservative General Fund budget; matched resources to provide City services effectively and efficiently; focused on economic and redevelopment needs of the City, especially in the Midtown area; maintained adequate reserves to ensure against economic uncertainties; and was prepared to implement Council policy and to reflect the commitment of the entire organization to provide the highest level of service for the community and to preserve and enhance the quality of life in Milpitas.

Department Presentations

City Council

City Manager Wilson reviewed the accomplishments, objectives for the coming fiscal year, and presented the budget for the City Council showing an overall increase of \$14,895. Vice Mayor Dixon requested that under performance indicators, the meetings that Councilmembers attend as liaisons to commissions and also county and regional meetings be included. Mr. Wilson said staff would come up with a number for the final budget.

City Manager RDA/Economic Development

City Manager Wilson reviewed the accomplishments, objectives for next year, and presented the budget for the City Manager's Office showing an overall increase of \$97,431 with no staffing changes proposed. Vice Mayor Dixon asked where the City Manager's 5 percent contribution was reflected. Mr. Wilson responded the 5 percent, or approximately \$10,000, didn't show as it never gets expended.

Mr. Wilson also presented the Redevelopment and Economic Development accomplishments and objectives reporting that Redevelopment Revenues totaled \$32,531,173; total Redevelopment Expenditures and other financing uses totaled \$47,549,201; and the projected Redevelopment Fund Balance at 6/30/05 was \$166,200,372.

City Clerk

City Clerk Gail Blalock reviewed the accomplishment, objectives for next year, and presented the budget for the City Clerk showing an overall increase of \$70,590, the majority of which was for the November 2004 election, and no staffing changes were proposed.

Engineering

City Engineer Mike McNeely reviewed the accomplishments, objectives for next year, and presented the budget for Engineering representing an overall increase of \$732,959, with no staffing changes proposed. Councilmember Livengood asked if the time frame had gotten shorter or longer, or remained about the same for development project reviews. Mr. McNeely responded he thought some efficiencies had been provided but the quality of plans staff was seeing today was not as good and, therefore, took more time.

Building

Chief Building Official Edgar Rodriguez reviewed the accomplishments, objectives for next year, and presented the budget for Building representing an overall increase of \$66,685, with no staffing changes proposed. Councilmember Livengood inquired if there was any change in the length of time it takes to get some of these permits issued. Mr. Rodriguez responded staff was seeing a trend of a lot of homeowners coming in with "home grown" plans and staff has to hold their hand through the process; the quality of the plans coming in has slowed down the process somewhat but the response has become faster because of the information staff has developed to help them. Mayor Esteves inquired how service was measured. Mr. Rodriguez responded for every permit that is issued, a survey is included. Mayor Esteves questioned whether the customer surveys should come back to the division and suggested staff come back with a proposal.

RECESS

Mayor Esteves recessed the City Council meeting at 9:02 p.m. The Council meeting reconvened at 9:12 p.m.

<i>Recreation</i>	Recreation Services Manager Bonnie Greiner reviewed the accomplishments, objectives for next year, and presented the Recreation Services budget showing an overall increase of \$235,384, with no staffing changes proposed. Vice Mayor Dixon asked that the number of employee and commissioner memberships at the Sports Center be shown separate from the paid memberships.
<i>Information Services</i>	Information Services Director Bill Marion reviewed the accomplishments, objectives for next year, and presented the budget for Information Services showing an overall increase of \$23,073, with no staff changes proposed.
<i>Human Resources</i>	Human Resources Director Cherie Rosenquist reviewed the accomplishments, objectives for next year, and presented the budget for Human Resources showing an overall increase of \$244,768, with no staffing changes proposed. Councilmember Gomez inquired if the customer service survey that was listed as an objective last year had been developed. Ms. Rosenquist responded unfortunately they were not able to get to it due to staffing and projects. Councilmember Gomez asked if it had been dropped because he didn't see it on this year's list. Ms. Rosenquist responded that they were trying to prioritize their projects for the coming year and could look at it if it was of interest to the Council.
<i>City Attorney</i>	City Attorney Steve Mattas reviewed the accomplishments, objectives for next year, and presented the budget for the City Attorney showing an increase of \$85,500.
<i>Finance</i>	Finance Director Karlen reviewed the accomplishments, objectives for next year, and presented the budget for the Finance Department showing an overall increase of \$237,789 and no staffing changes were proposed.
<i>Non-Departmental</i>	Ms. Karlen also reviewed the Non-Departmental budget, which included costs not specific to any one department, and showed an overall increase of \$14,567,099 due to increases in utility costs, \$1.7 million for water purchases, sewer plant maintenance and capital improvements, and capital outlay of \$4 million for land purchase installment.
<i>Public Works</i>	Public Works Supervisor Dennis Cuciz reviewed the accomplishments, objectives for next year, and presented the budget for Public Works showing an overall increase of \$823,208, with no staff changes proposed and \$7,800 in capital outlay to purchase water meters, fire hydrants, and a pressure washer for the Civic Center Plaza. Public Works Supervisor Carol Randisi responded to the Mayor's concern that the grant last year for planting trees was not in addition to the City's regular tree planting program.
<i>Planning & Neighborhood Services</i>	Acting Planning & Neighborhood Services Director Tambri Heyden reviewed the accomplishments and objectives for next year and presented the Planning & Neighborhood Services budget showing an overall increase of \$127,016, with no staffing changes proposed. Vice Mayor Dixon expressed disappointment over the attendance at the Town Hall meetings and said she would like to see the City be more pro-active to also incorporate next year a citywide survey, through the mail or the web site, to get feedback from the community regarding neighborhood beautification and other problems.
<i>Police</i>	Police Chief Charles Lawson reviewed the accomplishments, objectives for next year, and presented the Police Department budget showing an overall increase of \$2,629,738 due primarily to increased costs for benefits and negotiated salary increases; no staffing changes proposed; and purchase of 11 vehicles from the Vehicle Replacement fund was included. Vice Mayor Dixon, referring to the 50/50 partnership with the middle schools, commented that the City was now absorbing the entire cost, which wasn't intended to be on a permanent basis, and asked that it be noted that the City is absorbing the School District's cost for this program. Councilmember Polanski asked if there had been any discussion with the School District to see if they are looking at going back to the 50/50 arrangement or considering it as part of their budget process or have they requested the Council continue the burden another year. Chief Lawson responded there hadn't been any discussion. Councilmember Polanski

said she didn't want to lose sight of the fact that it was a partnership and, hopefully, it wouldn't continue where the City is covering the full burden.

Fire

Fire Chief Bill Weisgerber reviewed the accomplishments, objectives for next year, and presented the Fire Department budget showing an overall increase of \$1,675,673 with no staffing changes proposed.

2004-2005 Capital Improvement Program

City Engineer McNeely reported that on April 20, 2004, the Council reviewed this document that proposed delivering approximately 104 projects during 2004-05 at a cost of \$15,915,000. Mr. McNeely briefly reviewed the summaries of Community Improvement, Parks, Streets, and Utility (Water, Sewer, Storm Drain) projects proposed for 2004-05.

City Manager Wilson said that concluded the staff presentations.

Public Input

Mayor Esteves opened the public hearing and invited public comments.

Rob Means, Milpitas, referring to page 115 of the CIP document (the pedestrian/bicycle crossing over the Solelectron property), commented that Solelectron had said no to the standard steel and concrete solution so the current solution was to move it south 1/3 mile to Gibraltar; and expressed concern for investing \$100,000 in a project that doesn't really meet what everybody was expecting and wanted. Mr. Means asked that it be opened up again a little in terms of conceptually how we are going to do this and how we can include PRT as a technology to cross the Solelectron property that might not get the same objections.

MOTION to close the public hearing.

M/S: Dixon, Gomez.

Ayes: 5

Mayor Esteves, referring to the fifth recommendation on the agenda to conceptually approve salary adjustments for Management employees, asked what the end/resulting salaries would be for all the affected employees and said he would like that information so that everybody would be aware of the actual salaries. City Manager Wilson said that could be done but the practice was not consistent with how salary increases for the labor unions had been addressed; if the Council wished to have that information identified, it could be done but it would highlight the management staff; and the 4.6 percent was an average of all the increases for the general work force. Mayor Esteves said he fully understood the 4.6 percent seemed to be fair because it was just like the represented across the board; on the other hand, his concern was we might be hitting the ceiling and thought there should be some cap on the pay for high positions; he wanted to look at caps because we are Milpitas and we can't have somebody paid equivalent to San Jose or San Francisco; there could be some other approach such as a bonus program or other ways to make it fair and equivalent; his concern was the other end of the spectrum, which he wanted to bring to the Council's attention, and paying so high a salary that it would be equivalent to a State position; he was trying to hit a balance and wanted to look at caps on top management positions, maybe let management leadership decide on some type of performance bonus program.

Mr. Wilson responded it could be done but thought there was a discrepancy when that had not been done with the rank and file in negotiations; it would not compare to how salaries have been negotiated for the represented groups. Mayor Esteves said he understood that but was looking at some kind of performance bonus package. Mayor Esteves said he was only one vote, suggested it might be discussed in Closed Session or with some other agenda item, but thought it should be discussed by the Council and the resulting salaries of everyone looked at.

Councilmember Polanski commented that it looked like the Mayor wanted more information, she didn't like making a decision at this late hour, and suggested agendaizing the issue so that more detailed information could be provided.

City Attorney Mattas advised that if the Council wished to receive the additional information, it could be provided but also recommended the Council schedule an appropriate Closed Session.

Councilmember Livengood commented that he was hearing two issues; one about disclosure of salaries and one about caps on management salaries; and asked if the Council would be getting an answer soon on the issue of disclosure of salaries. City Attorney Mattas responded it was true the Council was provided with information; however, there was a difference between salary ranges and actual salaries, and ranges can be disclosed.

Mayor Esteves said he wanted to defer action on recommendation 5 because he needed more information, whether in Closed Session or open session, and a discussion because it would set a precedent and maybe start a good practice. Councilmember Livengood said he would be willing to go along with that if it could be done in public

Vice Mayor Dixon said she thought the Council needed to manage and view the organization as a whole and not bifurcate out management; she thought there was merit with what the Post was requesting but she was also looking for parity in the disclosure; the Council was talking about going well above the limitations of the law as far as open government so she looked forward to discussing this in whatever manner it was brought forward; and as far as delaying item 5, she didn't see any merit since it was just being approved conceptually and there was still time for discussion.

MOTION to:

1. Conceptually approve the 2004-2005 City/Agency proposed budgets;
2. Conceptually approve the 2004-2005 Capital Improvement Program;
3. Conceptually approve the Preliminary Five-Year (2004-2009) Capital Improvement Program; and
4. Conceptually approve salary adjustments for Management employees notwithstanding the City Attorney's response to the salary request from the Milpitas Post.

M/S: Dixon, Gomez.

Mayor Esteves said he would not be able to support the total motion because he could not conceptually approve the salary adjustments as he needed more information on the impact. Councilmember Livengood suggested breaking out the salary adjustments.

Vice Mayor Dixon revised the motion to remove the salary adjustments for Management employees.

VOTE ON MOTION to:

1. Conceptually approve the 2004-2005 City/Agency proposed budgets;
2. Conceptually approve the 2004-2005 Capital Improvement Program;
3. Conceptually approve the Preliminary Five-Year (2004-2009) Capital Improvement Program; and

Ayes: 5

MOTION to conceptually approve salary adjustments for Management employees.

M/S: Dixon, Gomez. Ayes: 2 (Dixon, Gomez) Noes: 3 (Esteves, Livengood, Polanski)

Councilmember Polanski stated the reason for her "no" vote was that she had difficulty conceptually approving a salary adjustment and letting employees know that we might go back and discuss it in Closed Session to make a decision.

City Manager Wilson suggested an item could be scheduled for Council consideration at a future Council meeting. City Attorney Mattas commented that some of the data the Council asked for was data that would be provided confidentially and the Council would need to make a policy decision as to how to handle that data and recommended doing that before disclosing any data publicly. Mr. Mattas suggested that the Council could have the data presented in Closed Session and could have a public discussion; however, whatever decision is made regarding management salaries, it has to be made in public session.

Mayor Esteves asked that it be placed on the next agenda with some documented procedures, rules, and guidelines. City Manager Wilson said staff would put it on the agenda both ways and requested some guidance on what information the Council wished to have. Mayor Esteves said he would like to have the resulting salaries of City employees.

VII. ADJOURNMENT

There being no further business, Mayor Esteves adjourned the joint meeting at 11:11 p.m.

Gail Blalock, CMC
City Clerk/Secretary

**The foregoing minutes were approved by the City Council as submitted on
June 15, 2004.**

Gail Blalock, City Clerk

Date

APPROVED MINUTES
CITY OF MILPITAS

Minutes:	Regular Meeting of Milpitas City Council (Including Joint Meeting with Redevelopment Agency)
Date of Meeting:	May 4, 2004
Time of Meeting:	6:00 p.m. (Closed Session) 7:00 p.m. (Regular Session)
Place of Meeting:	City Hall Council Chambers, 455 E. Calaveras Blvd.

ROLL CALL

Mayor Esteves called to order the regular meeting of the Milpitas City Council at 6:00 p.m. Present were Mayor Esteves, Vice Mayor Dixon, and Councilmembers Gomez (arrived 6:30 p.m.), Livengood (arrived 6:30 p.m.), and Polanski.

CLOSED SESSION

Mayor Esteves publicly stated the Council would convene in Closed Session to discuss three of the five items listed on the agenda; items 3 and 4 would not be discussed.

1. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

(Pursuant to Government Code Section 54956.9[a])

Title: Stansell v. City of Milpitas (WCAB No. WCK 0054841 and 0054842)

2. CONFERENCE WITH LABOR NEGOTIATOR

(Pursuant to Government Code Section 54957.6)

Agency Negotiator: Eddie Kreisberg and Cherie Rosenquist

Employee Organization: LIUNA

3. CONFERENCE WITH REAL PROPERTY NEGOTIATOR

(Pursuant to Government Code Section 54956.8)

Property: APN #022-08-042

Negotiating Parties: City of Milpitas and County of Santa Clara

Agency Negotiator: Thomas J. Wilson

Under Negotiation: Terms and Conditions for Disposition or Lease

4. CONFERENCE WITH REAL PROPERTY NEGOTIATOR

(Pursuant to Government Code Section 54956.8)

Property: Vacant Property N. Main Street (APN No. 2208003)

Negotiating Parties: City of Milpitas/Milpitas Redevelopment Agency and Kathleen Cardoza

Agency Negotiators: Thomas J. Wilson and Blair King

Under Negotiation: Terms and conditions for acquisition of property

5. CONFERENCE WITH REAL PROPERTY NEGOTIATOR

(Pursuant to Government Code Section 54956.8)

Property: 130-150 Winsor Street and 116-130 N. Main Street

Negotiating Parties: Milpitas Redevelopment Agency and Bruce Pallak, dba Garbe's Towing

Agency Negotiators: Thomas J. Wilson and Steven Mattas

Under Negotiation: Terms and conditions for acquisition of property interest

Mayor Esteves adjourned the meeting to closed session at 6:01 p.m.

The City Council meeting reconvened at 7:00 p.m. with Mayor Esteves presiding and Vice Mayor Dixon and Councilmembers Gomez, Livengood, and Polanski present.

**CLOSED SESSION
ANNOUNCEMENTS**

City Attorney Mattas announced that items 3 and 4 were removed from the Closed Session Agenda; for items 1 and 2, direction was provided to staff; and for item 5, the

Council voted 3 to 0 (Mayor Esteves, Vice Mayor Dixon, and Councilmember Polanski, with Councilmembers Gomez and Livengood absent) to approve a relocation agreement with Garbe's Towing.

PLEDGE

Members of Troop No. 92 led the Council and audience in the Pledge of Allegiance.

MINUTES

MOTION to approve the City Council minutes of April 20, 2004, including joint meeting with the Redevelopment Agency, as submitted.

M/S: Gomez, Polanski.

Ayes: 5

SCHEDULE

MOTION to approve the Schedule of Meetings for May 2004 as submitted.

M/S: Livengood, Polanski.

Ayes: 5

PRESENTATIONS

Mayor Esteves presented a Certificate of Reappointment to Diane McDonough who was recently reappointed to the Economic Development Commission.

Mayor Esteves read a Proclamation declaring the week of May 16-22, 2004, as "Public Works Week" and presented it to Glenn Campi of the Public Works Department. Mr. Campi said it was a great honor to receive the proclamation and commented that Public Works services are often taken for granted, as well it should be.

Mayor Esteves read a Proclamation declaring the month of May 2004 as "Older Americans Month" and presented it to Barbara and Art Ebright. Mr. Ebright said they were honored to accept the proclamation on behalf of all Milpitas seniors and the Senior Center; they appreciated the City providing the seniors with the current facility and the new modular addition; the facilities had become a focal point for numerous activities; and thanked the staff for their tireless efforts.

Mayor Esteves read a Proclamation declaring the month of May 2004 as "Water Awareness Month" and presented to Glenn Campi, Water Systems Operator. Mr. Campi said it was great that the City was making aware how precious water is.

CITIZENS FORUM

Mayor Esteves invited members of the audience to address the Council on any subject not on the agenda, requesting that remarks, including any visual or technology-assisted presentations of any kind, be limited to two minutes or less, and noted that the City Clerk would be using the timer and when the red light at the podium came on, two minutes would be up.

Trisha Lee, Adviser for the Leadership Program at Thomas Russell Middle School, along with Jay, a student who will be participating in the Leadership Program next year, asked the Council for a contribution to the Leadership Program to assist 21 students attending a camp this summer at Stanford run by the California Association of Student Leaders; the students need to raise \$8,000 by June 1. Mayor Esteves asked that the request be placed on the next Council agenda.

Craig Ranker, a CAC Commissioner and member of the Ethics Steering Committee, invited everyone to attend the last of the four workshops working to write an ethics code for the City; the remaining workshop will be held Wednesday, May 5, 7:00-9:00 p.m. at City Hall.

Rob Means, Milpitas, suggested since Solectron won't allow the bicycle/pedestrian bridge (over the railroad tracks connecting Yosemite Drive with Curtis near the Great Mall) to be built on its property using standard steel and concrete technology, why not propose using PRT technology to Solectron as an alternative. Mr. Means said a PRT could be built for about half the cost of standard steel and concrete technology and urged the Council to become curious about the possibility of utilizing Personal Rapid Transit.

Ye Zhang, Milpitas, said the Union Pacific trains are running at 1:00 a.m. and asked if there was anyway to reschedule them so they don't operate after midnight. Mr. Zhang also asked if there was any plan to relocate the BFI garbage dump at the end of Dixon to somewhere else. Mayor Esteves asked staff to get back to Mr. Zhang.

ANNOUNCEMENTS

Vice Mayor Dixon, referring to the recent State of the City Address, thanked the Mayor and everyone who participated in making it one of the nicest events the City had had in a long time; acknowledged the students that participated – the two Co-MCs, Kevin Lai and Courtney Turner, Calvin Rodil Tsai who gave the invocation, Daniel Dangca, the vocalist, Hemal Patel who gave the benediction, and Cmdr. Jeff Queenan and the NJROTC. Vice Mayor Dixon reported on April 22, 2004, the Citizens Emergency Preparedness Advisory Commission, under the leadership of its Vice Chair Annell Spencer, and volunteers from the RACES group and the Strategic Actions for Emergencies, completed the 9th Annual MUSD Safety Drill, Evacuation, and Mass Feeding held at Rose Elementary School this year. Vice Mayor Dixon stated she chaired the Joint Powers Authority Board meeting for the Santa Clara County Library System; public input was received on the budget for the County Library System; and it did not look good as the Library District, as a "Special District", was facing the potential loss of \$98 million to \$250 million to the State. Vice Mayor Dixon reported that on Friday, April 23, 2004, the VTA Board held its monthly workshop; following the workshop she and staff met with the representatives of Morgan Hill and Gilroy to talk about priorities and common ground, and would be meeting on a monthly basis; the previous week, the VTA Policy Advisory Board for the Silicon Valley Rapid Transit Corridor met and received the status report on the Draft Environmental Documents.

Councilmember Polanski, referring to the recent State of the City Address, congratulated the Mayor and thanked the Chamber of Commerce for all its support of the event. Councilmember Polanski also announced that the Global Village was held the previous Saturday at the Sports Center with over 13 countries represented, approximately 2,000 attended the wonderful event, and congratulated the service groups and restaurants that participated.

Mayor Esteves said he attended the Sunnyhills Community breakfast where the topic was Literacy and encouraged everyone to volunteer to advocate and support literacy. Mayor Esteves announced that a new business was opening in Milpitas known as the Way Center, Inc., founded and owned by young Milpitas entrepreneurs. Mayor Esteves commented on a recycling review from BFI that congratulated Milpitas businesses for being the cleanest recycling in Santa Clara County and shared an editorial from the *San Jose Mercury News* with the headline "Milpitas Sets an Example for San Jose." The Mayor congratulated the public for getting involved in this worthwhile project and thanked the Community Advisory Commission and staff for supporting this project. Mayor Esteves also read an article from the *San Jose Mercury* about children deserving access to crucial learning in preschool and said Milpitas was ahead of this as last year Milpitas had an Early Childhood Reading Program in partnership with the Milpitas Unified School District and thanked the District and the Council for supporting the program.

AGENDA

MOTION to approve the agenda as submitted.

M/S: Gomez, Livengood.

Ayes: 5

CONSENT CALENDAR

Mayor Esteves inquired if anyone wished to make any changes to the Consent Calendar. There were no requests.

MOTION to approve the Consent Calendar, items with asterisks on the agenda, as submitted in accordance with the staff recommendations.

M/S: Livengood, Polanski.

Ayes: 5

***5.**

Authorized the Mayor to sign a letter of support for AB 3011 (Laird).

**AB 3011
Motor Vehicle License Fee**

- *6.
Revised Transportation**
- Approved the following proposed revisions to the Transportation Position Statements.
- Added a statement to consider alternative transportation technologies when appropriate;
 - Updated the Cross Connector project to include the preparation of a transit area plan around the Montague transit stations;
 - Deleted discussions of the now completed Countywide Expressway Study and Best Practices Manual;
 - Updated the I-680 High Occupancy Vehicle Lane project to reflect efforts to acquire funding for a soundwall in Sunnyhills and coordination of soundwall construction;
 - Confirmed the City's commitment to provide 20% matching funds for the bike/pedestrian overcrossing at the Union Pacific railroad tracks; and,
 - Added the City's approved priorities for the Valley Transportation Plan 2030 process.
- *7.
S.A.F.E. Neighborhood Preparedness Program**
- Authorized Fire Department acceptance of Crowne Plaza employee's "S.A.F.E." Neighborhood Preparedness Program donation, in the amount of \$260 be utilized for Public Fire and Disaster Preparedness Education instructional materials.
- *8.
Fire Department Recruitments**
- Authorized the City Manager to execute an agreement with Hargis & Associates to assist City staff in developing job analysis, examinations and assessment centers for two upcoming recruitments (Fire Captain and Fire Engineer) in an amount not to exceed \$25,600, subject to approval as to form by the City Attorney.
- *9.
Parallel Force Main (Project No. 6078)**
- Authorized the City Engineer to execute a contract change order with Ranger Pipelines in the amount not to exceed \$17,795, for installation of additional air relief valves and modifications to the access hatch at the treatment plant (Project No. 6078), subject to approval as to form by the City Attorney.
- *10.
Hall Park Walkway (Project No. 5058)**
1. Appropriated \$235,000 from Park Fund.
 2. Awarded the construction contract to JW Riley & Son, Inc. in the amount not to exceed \$288,170.00, for Hall Park Walkway (Project No. 5058), subject to approval as to form by the City Attorney.
- *11.
Singley Drive Neighborhood, Improvements (Project Nos. 4200, 4222, and 8149)**
- Award the contract, including the add alternate to Fanfa, Inc., in the amount not to exceed \$1,085,379.75, for the following Singley Drive neighborhood Improvements, subject to approval as to form by the City Attorney.
- Singley Area Street Rehabilitation, Phase III (Project No. 4200)
 - Marylinn Drive Sidewalk (Project No. 4222)
 - Sports Center Master plan Improvement, Phase I (Project No. 8149)
- *12.
Engineering Plotter**
- Awarded the bid for the plotter/printer used to print large engineering drawings from CAD systems to California Survey & Drafting Supply as the lowest bidder in the amount of \$10,054.19 and authorize the purchase.
- *13.
Network Fusion Link**
- Authorized the installation of a Network Fusion Link between Fire Station One and City Hall (the final step in the communications redundancy process to establish a network fusion link), by Professional Convergence Solutions, in an amount not to exceed \$8,364.75 from funding that is available in CIP 8093 Telecommunications Infrastructure.
- *14.
Miscellaneous Vendors**
- Approved purchase request in the amount of \$5,815.60 to Absolute Energy Solution, Inc. to purchase a 15KW standby generator to replace the existing standby generator on Monument Peak. The generator will serve as back up power supply for radio communications equipment for the Police Department. Absolute Energy Solution submitted the lowest bid. (Funds have been allocated and are available from State Asset Seizure Funds for this purchase.)

PUBLIC HEARINGS

1. BART Extension Comment Letter

Principal Transportation Planner Joe Oliva informed the audience that there was a comment card available for those who would like to make comments on the BART Environmental Document; the VTA was not responsible for responding to public comments; however, staff had provided cards for residents wishing to make comments to the VTA and every comment would be responded to in writing by the VTA as part of this environmental document process. Mr. Oliva explained that this was the BART extension to Milpitas San Jose, and Santa Clara and the Draft Environmental Impact Statement/Draft Environmental Impact Report; the Environmental Document examined three alternatives: 1) No Action; 2) New Starts Baseline; and 3) the BART extension (also referred to as the locally preferred alternative); the corridor would be a 16.3 mile BART extension from Fremont through Milpitas/San Jose and terminating in Santa Clara where there would be a proposed people mover connection to the San Jose International Airport. Mr. Oliva used slides to show the alignment through Milpitas reporting that it would follow the Union Pacific Railroad tracks and would consist of seven stations (including the future South Calaveras Station, which was not part of the package funding at this time); there would be a maintenance facility at the Santa Clara/San Jose boundary; 6 minute headways were proposed with approximately 83,600 riders expected by 2025 and revenue service (under best case scenario) starting by year 2014.

Mr. Oliva, reviewed the five major issues identified by staff in the Comment Letter that included Land Use/Montague Station Design, Dixon Landing Road Options, Railroad Issues, Minimum Operating Segment, and Visual Quality and Aesthetics.

Councilmember Livengood inquired what was going to be done with the system at Dixon Landing; if it was moved to the north, was it planned that all that segment of BART would be aerial from the Warm Springs station all the way to Milpitas. Mr. Oliva responded it would be at-grade entering into Milpitas and would be on an elevated structure just across Dixon Landing Road. Councilmember Livengood commented that the issue would be how to get over Dixon Landing Road without creating a further conflict between rail traffic and automobile traffic and inquired if the aerial option was being pushed because it was the least expensive of the options. Mr. Oliva confirmed that was correct.

Councilmember Livengood inquired of the other two options, which one was the most expensive, and how much more expensive were they than the aerial. City Engineer Mike McNeely stated the at-grade option was \$11 million more expensive and the retained cut was \$8 million more expensive.

Councilmember Livengood inquired if there had been instances where communities had been granted the opportunity for at-grade cuts to avoid the aerial presentation because an aerial structure was much more than just the visual (soundwall costs already incurred would be considered a waste of money). Mr. McNeely said for the money that will have been spent, we will have lost an opportunity to grade separate Dixon Landing from the railroad, eliminate the horns and rail noise, etc., and it was a close call between the at-grade and the retained cut but he thought the investment of a little money up front would improve the situation for the residents.

Councilmember Livengood inquired if the retained cut offered some relief from the vibration issue. Mr. McNeely called upon one of the consultants in the audience.

Dave Wheeler said he had not been able to study it as much as he'd like; the report was very vague as to what the different alternatives entailed and what kind of mitigation they would offer. Councilmember Livengood inquired if Mr. Wheeler meant the difference between the three options as it related to vibration and asked about noise. Mr. Wheeler said any time the train could be put in a retained cut, it would reduce vibration/noise because it had been lowered; when it was elevated, it made it that much more difficult to reduce noise. Councilmember Livengood said he was trying to get a feel for exactly what impact it had and was curious as to what the decibel change/the vibration change might be with all three options.

Mr. Wheeler said that obviously putting the rail into the cut would be the most dramatic improvement for both noise and vibration.

Councilmember Livengood inquired how far to the north would you have to go to begin the actual cut to get to the point it was accomplished at Dixon Landing Road. Mr. Oliva responded 1,000 feet. Councilmember Livengood inquired how long it would be in the cut mode. Mr. Oliva said it would be an equal amount to come back up the grade, he did not have the numbers but could get the exact information at a later time.

Mayor Esteves opened the public hearing and invited comments.

A man who didn't give his name said with respect to the alignment option, the retained cut was the most favorable option for the Dixon Landing area neighborhood as it was least noisy and creates the least vibration, and it only costs \$3 million more than the at-grade option; he did not feel the EIR Document was clear in telling all the differences; commented on the noise level of passing trains and with the BART trains going at the maximum of up to 69 mph; felt that Milpitas should demand the BART trains to run at lower than 35 mph because of the vibration level; there was a ballast mat or underlay that would reduce the vibration levels, and felt the City should demand that BART take proper mitigation action that best suits the residents.

City Manager Wilson reminded everyone that it was very important to write their comments and direct them to the VTA; oral comments were very valuable, however, they do not have to be responded to; sending comments to the VTA will make them part of the record.

Ryan Lederman, attorney representing the Great Mall of Milpitas, thanked staff for their report and said they agreed with a lot but did have a number of concerns about the DEIR and they fully intended to submit a letter to the VTA; they were concerned about the use and interference with Great Mall property; concerned about noise/vibration/subsidence/aesthetics and felt the City's concerns were similar regarding these concerns; there was no analysis whatsoever about the impact on Great Mall Drive; additionally, they had concerns there might not be enough parking at the Montague station; concerned about the railroad Wye (about disclosure of significant environmental impacts); concerned about the cumulative impacts of the project; but as a whole, felt BART was a good project but there needed to be more analysis and more disclosure about the significant environmental impacts.

Rob Means said there were six cities and the Board of Supervisors concerned about the BART extension into San Jose; the VTA had been called upon (in various letters) to produce a financial expenditure plan for the 2000 Measure A project; quoted one of the letters which stated "the Supervisors are concerned that many of the projects promised to the voters in the 2000 Measure A plan will not be built"; and commented on the rough numbers showing the expenses for building the system exceeded the income. Mr. Means further stated he felt with the PRT, a connection could be made between the local LRT station and the Fremont BART station for only \$200 million with the annual operating cost being zero because the fare box would pay for the very low operation and maintenance of such a system. Mr. Means suggested approaching the VTA and stating that BART was too expensive to build, we ought to let it go so we can open up new possibilities; then, PRT could be offered as a solution for problems such as traffic congestion, air pollution, and energy insecurity; felt that offering a potential solution would make it easier for the VTA to let go of BART he wanted to make it easier on the VTA because every year money is being spent on the BART project; and called on the Council to make it easy for the VTA and do it sooner rather than later.

A man said he was concerned about the vibration; he knows what it feels like every time the train goes by; felt that the measurement the people probably measured was the ground vibration; questioned what happened when the second story of the house is caused to vibrate; and he did not feel the vibration at the second level of the homes was really studied.

MOTION to close the public hearing.

M/S: Gomez, Livengood

Ayes: 5

Mayor Esteves reported that these concerns had been discussed in the City Council Transportation Subcommittee comprised of the Mayor and the Vice Mayor.

Vice Mayor Dixon thanked the residents who had taken the time to speak because it was important to have resident input; the VTA Board was also extremely concerned about the vibration, and commented on a prior problem with vibration when KB Homes first built California Landing. Vice Mayor Dixon said there were three proposals that the VTA staff had looked at; the alternative the VTA preferred right now out of all three was the least expensive; there were other areas within the process of the 16.3 miles projection of BART where there had been accommodations and compromises made, in particular by the hard effort of City staff (i.e., Montague/Capitol Station); the Board was looking at supporting the Wye to be moved out of one of the proposed Milpitas spots up north into Fremont, which would save millions; VTA was at the point of getting public input; and getting further into the two-year preliminary engineering process, there would be more than ample time to have all questions addressed and more analysis performed.

Councilmember Livengood commented that he felt comfortable that the issue was being dealt with by the City's Transportation Subcommittee, by the City's residents, and by the VTA Board; he thought the sensitivity of how Milpitas felt about BART was understood, however, that didn't mean Milpitas would take it at any cost; he wanted to make sure that this critical transportation improvement did not reek havoc in the City's neighborhoods; felt that Vice Mayor Dixon and the others would go to bat for Milpitas when this comes before the appropriate body to make sure Milpitas' voices were heard; Milpitas was going to insist that this project not only be an important transportation link for all of the Bay Area, but it be a good neighbor to Milpitas residents and expressed appreciation to everyone who was working on this.

Mayor Esteves said although cost was a factor, so was quality of life and Milpitas would not just go for the lowest cost but would look to balance the two.

Councilmember Polanski said she attended the VTA Policy Advisory Committee meetings; felt tonight's comments would very helpful and from the comments received, that further analysis was needed, especially on the Dixon Landing Road option.

Ann Jamison, VTA Project Manager for the planning for this project, said the VTA representatives were in the audience to listen but she had two clarifications she would like to address: first, on the distance for the retained cut – that would be 2,000 feet – it would be approximately the same distance as the aerial alignment (1,000 on either side); and clarified that the \$8.2 million increase for the Dixon Landing Retained Cut Option was with a speed limit of 25 mph and that the requested 35 mph would require additional track work and would be a more expensive option.

MOTION to approve the attached Draft Comment Letter on the DEIS/EIR.

M/S: Dixon, Polanski.

Ayes: 5

**2.
Appeal of Planning Commission
Approval Regarding Town
Center Redevelopment**

Mayor Esteves stated as he may have a conflict of interest because his brother was currently leasing a space at the Town Center and to avoid any potential or perceived conflict of interest, he would be abstaining from agenda items 2 and 3 and passed the gavel to Vice Mayor Dixon.

**3.
Ordinance No. 124.26**

Vice Mayor Dixon outlined the manner in which this item would be heard stating that first would be a staff presentation, then Council questions of staff; the appellant would be allowed 20 minutes for statements; the applicant would be allowed 20 minutes for statements; the

Town Center Signs

appellant would be given seven minutes for rebuttal and the applicant would be given seven minutes for final comments or rebuttal; the public hearing would be opened for public testimony, and following close of the public hearing, the Council would deliberate.

Assistant Planner Troy Fujimoto reported that the presentation would also include item 3, which was the introduction of the Sign Ordinance amendment. Mr. Fujimoto, using a PowerPoint presentation, presented an overview that included a description of the site area/project location, described the project as shopping center modifications that included the demolition of the western portion of the center and remodeling of the entire center, new supermarket and retail space, new landscape and architectural themes, and a new sign program. Mr. Fujimoto described the proposed supermarket as a 54,000 sq. ft. 24-hour operation that would include sales of all types of alcoholic beverages and an internal coffee cafe. Mr. Fujimoto described the building architecture, showed the site plan for the commercial, and displayed drawings of the proposed landscaping that included a row of palm trees and a group of maple street trees. Mr. Fujimoto reviewed the proposed Sign Ordinance Amendments that would allow the Town Center shopping center to have two more freestanding signs and would codify past City Council interpretations. Mr. Fujimoto then described the residential project that proposed 65 residential units to be located adjacent to Berryessa Creek behind the shopping center; the units would be townhouse style with 3 and 4 bedrooms, and recreational amenities included a tot-lot, barbecue pits, benches, and shelters. Mr. Fujimoto reported the project public benefits included a vehicular connection between the Civic Center and the Town Center; an enhanced pedestrian connection from the Civic Center to the Town Center, a pedestrian ramp from the Town Center to the future Berryessa Creek Trail, and an enhanced pedestrian crossing at Beresford Court.

Mr. Fujimoto reported the basis of the appeal was the constructing of an additional supermarket and the adverse economic impact on existing businesses, the loss of the discount cinema, the appropriateness of increasing housing in this location, and a supermarket's lack of conformance with the General Plan. Mr. Fujimoto presented the staff responses to the four issues raised in the appeal and reported that based on its evaluation, staff recommended upholding the Planning Commission approval of the redevelopment of the Town Center, which was supported by findings and special conditions.

Deborah Rankin thanked the Council for all the work they do for the City and thanked Councilmember Gomez for all the time had given them. Ms. Rankin said they had lived in Milpitas since 1991 and had seen many changes; they felt the Town Center does need redevelopment and revitalization and she didn't believe there was anyone at the meeting who would argue with that; they also agreed that Shapell had a right to create a profitable and successful enterprise to get a good return on its investment but were disappointed to learn of the introduction of another major supermarket and the demolition of the discount cinema; they were hopeful that this would not become the future of the Town Center and felt it was important for the public to voice their thoughts on what was to become of the central area of the City. Ms. Rankin further stated they attended the Planning Commission meeting on March 24, they emailed Debbie Giordano to voice their concerns, they saw the plans and were still hopeful that this would not happen but later learned in the Post that the Planning Commission had approved the project. Ms. Rankin said they filed the appeal on Monday, April 5, and since that time they had heard from many people regarding the decision and looked forward to hearing from others in the audience tonight.

Ms. Rankin further stated they felt a supermarket would have a detrimental affect on other business in the area; she spoke to Nob Hill and the response was it would potentially be devastating; a question regarding this concern was does the City Council have the right to basically say "no" to Safeway for the sake of other enterprises; her issue was not specifically with Safeway; she believed the Council would consider what was best for the good of the whole City, its businesses, and its citizens; felt the Town Center could be used in a way that would bring more reasons for people to come to this area; with respect to the theaters, they attracted many people from surrounding areas who then shop in Milpitas and the theaters provide inexpensive family entertainment. Ms. Rankin suggested building the Town Center as

a center for families and others to gather for fun and entertainment, put in old fashioned lamp posts, a Barnes and Noble and a café, and it could become a vital area for both daytime and night time; the point was not to stop a new store from coming into the area but to create a new center that would attract people from all over and be enjoyed for many years to come.

Wiley Rankin said they moved to Milpitas when they bought their home in 1991 and were delighted with the community as it reminded them of the Midwest 40 years ago where they grew up. Mr. Rankin commented on some of the City's history citing the Ford Plant's move from Richmond in the fifties, the formation of the Sunnyhills neighborhood, read from a history book about the area given to them by the Methodist Church, and described the diversity of his neighborhood. Mr. Rankin said he felt the Town Center had a special place within the City structure; they showed up at City Hall on April 5 to file their appeal; they had read Al Garcia's comments about the General Plan; clarified that their question really was does it fit into the Zoning regulations, and read excerpts from the Zoning regulations (XI-10-22.01 Purpose and Intent) relating to the Town Center. Mr. Rankin said it looked like it would have a devastating effect on Albertson's as well as possibly several other grocery stores, he was completely respectful of Shapell's investment in the City and hoped that a new and better plan will be more profitable than the current one; there were seven other supermarkets in Milpitas but none being the size and scope of Safeway; two aspects that seemed inappropriate about the placement of the proposed Safeway were allowing such a huge store to take a prominent geographical position that seemed to give support that went beyond simple market competition; there was no supermarket that is close to this size and only one open 24 hours; this Safeway would have services such as a bakery, deli, and cafe that could threaten and wipe out other businesses; Safeway has had two other sites in the past; and expressed concern about the similar large store in Warm Springs that has had detrimental affect on local businesses. Mr. Rankin commented that a friend had gathered signatures on a petition from people in line at the Cinema and in two hours collected 283 signatures that were turned in at City Hall. Mr. Rankin also commented on a wonderful letter from Susan Berne to the editor that didn't get in the Post.

Kelly Erardi, Vice President, Shapell, said he had been employed by Shapell in Milpitas for nearly 21 years with responsibility for the commercial development in Northern California, was very proud of the project before the Council this evening, and had worked diligently with City staff and various consultants to produce vastly improved architecture and landscaping, many pedestrian links, signage, and improved retail uses. Mr. Erardi reported 65 new housing units would be built with 16 of those units meeting affordable requirements; they had committed to an array of items that were of public benefit; as a result of working with City staff, Shapell Industries was in agreement with every one of the recommended conditions of approval; the project was in conformance with all the General Plan and Zoning requirements; outlined a brief history of the project and said Shapell Industries chooses to look at what has happened in the City of Milpitas as an opportunity to redevelop its project and bring in new blood and growth and competition creates opportunities with new cycles. Mr. Erardi said their consultants were on board and available with him to respond to questions.

Galen Grant, Craig & Grant Architects, gave a PowerPoint presentation showing photos of the site and elements around the site stating that the majority of the development would be in one particular area although every building would be touched; the architecture being proposed for the new structure would be consistent with the existing structures; Shapell was committing to making the project a pedestrian oriented center; thought it was important to mention that although Safeway would be a 24-hour market, no trucks would approach from the north, all would enter off of Calaveras for Safeway and Hillview for Mervyn's; pointed out the connections to the center; commented that given the current architectural theme in relation to what was being proposed, he felt there was significant improvement; pointed out the landscape screening, stating it ran almost continuously along the back side of the buildings; stated that many of the existing mature trees would be relocated along the access route that would separate and provide access to all the residential areas behind the center; and shared sketches leading to the residential, pointing out the arterial spine for pedestrians and vehicles leading back to the residential.

David Smith, Architect for Thomas Cox, said the firm only does residential; the last five years had shown a significant increase in the segment of their work he called “reinvestment” (changing of land use) but recognizing that, and without that reinvestment, things don’t get better; he thought the residential portion was in a terrific location for this housing proposal; shared the site plan for the residential reporting that there were two major easements (an underground water easement and an overhead power easement); density was approximately 19 to 20 dwelling units per acre with two and three-story units, a pedestrian element through the middle of the site over to the connection to the retail area, and floor plans ranging from just under 1,500 sq. ft. to almost 1,800 sq. ft.

Mr. Erardi said this was a great project with many public benefits; 65 new housing units with 16 of them being affordable; there would be an increase in property tax turning a parking lot into housing units that would help fund valuable City services; property taxes would increase in the shopping center; being in the Redevelopment District, the City will receive an extra share of that property tax revenue; they were paying over three quarters of a million dollars in park fees, paying school fees, enhancing the sidewalks at the Beresford Square Center and in front of the Library, creating a bridge over Berryessa Creek, taking over the landscape maintenance on Calaveras Boulevard as well as the City right-of-ways that front Hillview and North Milpitas Boulevard; the project will also add jobs, dramatically improve the architecture, signage, and landscaping, and will bring the center back to life with a retail and residential mix creating needed housing. Mr. Erardi further stated the appeal stated an additional supermarket would have an adverse affect on existing businesses; if that logic was followed, Wal-Mart and Century Theaters should not have been approved; listed more stores that should not have been allowed to leave the Shapell center; McCarthy Ranch and the Great Mall should not have been approved; Safeway was the best large supermarket in Northern California; it would include the typical departments seen in other Safeway’s and consumers would have a more diverse choice of shopping; Safeway performs its own studies prior to committing large sums of capital for a new store, would employ approximately 125-150 people, was a very successful and fierce competitor; there was no guarantee that anyone will be successful in our economy, but Safeway has an excellent record in Northern California and other stores would have to step up their services to compete (a benefit to the consumer). Mr. Erardi said the adverse affect argument, followed to its logical conclusion, allows one of everything; the City did not embrace that type of philosophy; the City was richer and more diverse for not adopting such an argument that would stifle and limit free trade and would do the consumer a disservice. Mr. Erardi, addressing the housing in the immediate area, said staff had done a good job of covering that; the site was identified in the Housing Element, was complimentary to the adjacent housing, encouraged walking, was close to goods and services, and would add affordable housing stock to the community. Mr. Erardi, in response to the objection to the demolition of Cinema Saver, read a letter into the record from Paul Gunsky, President, CineLux Theatres, regarding their relationship with Shapell stating they were on a short-term lease, they had agreed at the beginning with Shapell that there was no intent for their operation being a long-term or permanent tenant in the Town Center, and they were in negotiations to relocate the Cinema Saver to another site in Milpitas. Mr. Erardi, addressing the question as to whether the project fits the General Plan, said City staff had given solid findings that easily supported the project fitting within the General Plan and described how he thought the project fit into the purposes and intent of the Zoning District, commenting that Safeway and all grocery stores are meeting places and this particular store will have a coffee bar with seating; the Civic Center, Library, and Community Center were also meeting places, and the project ties in and compliments existing uses and meeting places. In conclusion, Mr. Erardi said he believed it had been clearly demonstrated by City staff, the consultants, and himself that the project was a vast improvement to what currently exists, conforms to the General Plan and Zoning District, was a project that would tie into the existing Civic Center and would be complimentary in its use; the project is a major retail and housing component of the District and would dramatically improve the architecture, landscaping, pedestrian access, retail uses, and signage; with the Council’s approval Shapell Industries was ready to take the next step in the redevelopment of the project; and there was always somebody or someone that

says they could do better but in Shapell's opinion, their research indicates that this was the project they wanted to go forward with.

Wiley Rankin said the main purpose of the appeal was to sustain dialog on this issue, there were other people in the community besides themselves who weren't expressing their opinions for whatever reason, a lot of them were present tonight, and, therefore, their purpose had been fulfilled.

Deborah Rankin said she understood that the cinema had been a short-term lease tenant, that they were happy to move to another location in Milpitas and was glad the cinema was not going to be lost, but her emphasis was what do we want the Town Center to be; she had no problem with Safeway but it is a huge store that might overwhelm some of the other businesses; she was for competition but felt the Town Center could be something very different that would attract people; questioned if it was possible to still have the townhomes without tearing out the Cinema Saver, explaining that it attracts many people to the area; hated to see the Town Center lose yet another strong tenant and commended Shapell on its plans but said she would like to see a different mix there.

Wiley Rankin also commended Shapell for a very professional presentation and for addressing each of their points; thought the zoning question was addressed very well but still questioned if it wouldn't have an adverse affect within the Town Center; the 125-150 jobs was a lot, which was very good for the City, but not if Albertson's and Nob Hill close. Mr. Rankin said he also believed in competition.

Mr. Erardi said he had no further rebuttal comments.

Vice Mayor Dixon opened the public hearing and invited comments.

Robert Yeh, representing the Beresford Village Homeowners Association, said the Beresford Village residents would be the most significantly impacted by this development; they had already submitted a letter expressing their concerns; and they were opposed to the project primarily because they have had no channel or vehicle for addressing their concerns. Mr. Yeh further stated they submitted their concerns to the Planning Commission and received no response; some of their concerns were noise, traffic, safety, and they had already experienced some safety-related issues with people crossing the street to go to the Town Center; and asked that approval of the development be delayed until some of their issues were addressed, or if approval was given tonight, it be with the understanding that Shapell will work with their community. Vice Mayor Dixon asked if the Beresford Homeowners were notified of the meeting held at the Town Center on March 29? Mr. Yeh responded yes, a number of residents attended but the meeting was primarily a presentation and not for questions and answers. Vice Mayor Dixon said she was at that meeting, and she heard questions and answers so Mr. Yeh might have left early. Mr. Yeh said he stayed and there were some questions and answers but to this date, they hadn't had any kind of response to the issues they raised.

Ann Zeise, Milpitas, said there had been quite a bit of discussion about this on her web site; she would like to see a little more creativity because she saw this as the same old ugly; there was nothing original about it, thought it was boring, and it had no charm; she didn't have a social life based on the grocery store; she didn't need another place to buy Cherrios; and felt an educational retail center should be provided where stores are required to teach something and you could hang out and learn something, have some meeting rooms where people could meet and talk because more meeting halls and community classroom space were needed.

Heide Wolf-Reid, Milpitas, said she had heard a lot of discussion or things said in opposition that were all very valid arguments but she heard none that really applied to a commercial center; the lady and gentleman who appealed made a wonderful presentation but she didn't learn anything that she didn't already know; what she, as a long-time resident, had seen was when leaders, such as Safeway, leave the town as they did and the shopping experience in this area declined; as far as the other supermarkets, she hoped they would be afraid of competition

and improve because she was tired of empty store shelves and terrible service; when she's not happy, she talks to them but she hasn't seen any improvement; she hardly shops in this town any more; and she has talked to many other people who shop outside this town because there really isn't a good grocery store in this town any more.

Maurice Hart, CO, Giorgio's in the Town Center, said that for the last six years he has witnessed firsthand the list of tenants dwindling down in the Town Center and the energy of the stores and the center going down; there was a definite lack of energy that needed to be put back into the store fronts; he thought Shapell has a wonderful plan of breathing new life into the center; and instead of driving the consumers to San Jose, they will find a bright, clean, new center in their own neighborhood that will attract even more shoppers to Milpitas.

John Ambrosio, Milpitas, owner of Giorgio's Italian Restaurant, said he thought this was a good project that will bring in lots of positive energy to the City that was desperately needed; encouraged everyone who has any doubt to drive to Evergreen Village Center to see the beautiful job Shapell did in creating a downtown community for that neighborhood. Mr. Ambrosio also said he thought Safeway was an excellent choice, he'd seen the Town Center lose major tenants, what Shapell was proposing would create more jobs and opportunities; being in the restaurant business, he had experienced many landlords and Shapell was a real class act and always had the best interests of the community; it was unfortunate the movie theater would have to relocate but the only reason they had success in the Town Center was due to the benevolence of Shapell in keeping some energy in the center and the low rent; the farmers' market could continue; Shapell's vision was a breath of fresh air and nothing negative for the future of the Town Center; it would bring in people from all over the area, and he thought this was a true win-win situation for all involved.

Marian Welch, District Manager for Giorgio's, commented that over the years, she had seen tenants leave the Town Center for more modern centers in the area; Shapell has a terrific plan to update and renovate the entire shopping center; it will bring new jobs and money into the City; one of the positive things will be the easy access in and out of the center itself; thought Shapell has the foresight for a clean, bright, modern updated center that will be wonderful for Milpitas; and she hoped the Council would consider this when they vote tonight.

Nelson Bolyard, Milpitas, said he had lived within a mile of the Town Center for the last 20 years and for him the reason he goes to the center was the movie theater; after a movie he sometimes likes going to a restaurant and thought the restaurants have benefited from that, too; he thought that was not the case with a grocery store; within one mile there are three major grocery stores; also within one mile was an abandoned, second-run movie theater, which was probably the only recourse for the Cinema Saver; he thought the message to Shapell was if they don't have the right anchor, the little businesses that surround it will not prosper, and he would like to see the center remain some form of entertainment.

Allysson McDonald, Milpitas, thanked the Council for providing this forum for the public to respond, congratulated Shapell for their proposed improvements of pedestrian walkways and crossings and the proposed bridge over Berryessa Creek; she lives near the Hetch-Hetchy right-of-way and can see herself and her family biking to the Town Center and the Civic Center when this bridge is installed; she did have concerns about the loss of amenities, in particular of the entertainment feature within the center; she has friends who come from Oakland and Hayward that meet at the movies; people come from all over because of the theater; and she appreciated that the Town Center is a very open, walkable place now and would like to see it stay that way.

David Hall, Milpitas, said he attended the Shapell meeting at the old Warehouse in March; one of the neighbors asked about the Mervyn's property because it seemed like a better location, but the answer was that Mervyn's owned the property; with Mervyn's wanting to sell some of their stores, he thought it might be better to wait and see if that could be developed for the Safeway Store, which would keep the trucks away from the residential and make the whole development much better.

Paul DeNies, Milpitas, said he had lived in Milpitas for 24 years and was a math teacher; he was tempted to challenge his students to investigate the sustainability of 8-plus grocery stores; presented his sense of history commenting on the Sunnyhills Supermarket, the current Ocean Market, the former Fry's (now SaveMart) stating that these were three examples he envisioned of what would happen if Safeway was brought to town – this project would create three ghost centers; asked that before the Council decides to improve the tranquil and urban Town Center, that they please consider the desire of the citizens of the community; and thanked Deborah and Wiley for financing this appeal.

LuAnn McKeefery, Milpitas, asked if it was possible Shapell didn't know what they already have – an opportunity for entertainment; commented on how people enjoy that and going to the movies at affordable prices; she envisioned adding some music, such as a folk guitar, in front of a restaurant; she was not excited about a grocery store because she already had a grocery store; suggested Shapell take a look at something that may be vibrant for them; and just because there was nobody in that space, the Cinema Saver may have given Shapell a gift telling them what to do for the citizens of Milpitas.

A lady, who didn't state her name, said that as a senior citizen, she didn't want to see Milpitas become a big city; even now the traffic is so much; a supermarket was not a big advantage; she didn't think Milpitas people will run to the supermarket after 10 p.m.; instead, if there was a 24-hour emergency center, that would be more useful; and thought that if a supermarket is open 24 hours, the crime will increase and it will increase pollution and traffic and health hazards.

Barbara "BJ" Navarro, Milpitas said she thought the design was very lovely but she was compelled by her two sons to come because they have had several dinner conversations about the Town Center and the lack of having a cinema; her sons ride their bikes to meet friends and go to the movies because it was an inexpensive place they could afford; she didn't understand why another grocery store was needed, and she came so she might get an answer to that; she felt another grocery store wasn't needed but entertainment was needed in the Town Center; people who ride their bikes there don't need a grocery store; she realized the other businesses needed to make a profit but she also believed the heart and soul of Milpitas were the families that live here, art and culture should be in the town Center, and it won't be there if we have a Safeway. Ms. Navarro said when she looks at City Hall, she is very proud but when she comes to the tree lighting ceremony and a Safeway is built, it won't be the same.

Renee Briones, Milpitas, commented that last night at his scout troop meeting, he asked the 20 scouts what they do after school and a lot said they go to the Cinema Saver; they would have been here tonight but their parents don't let them stay out after 8 p.m. because of homework; being close to the high school and Russell Middle School, they want a place they can hang around; they can't hang around the school; if we take that away, they will not have a good place to hang around; we don't need another Safeway; Safeway is not a place to hang around; and asked the Council to consider that in their decision.

Susan Berne, Milpitas, read a letter she had already submitted to the editor stating that she shops at Safeway when her errands take her anywhere near a store, and there is one in Warm Springs conveniently located; she was strongly opposed to having one built in the Town Center as there are three other grocery stores within a one minute radius; the addition of Safeway adds no convenience to Milpitas; she thought it was inappropriate for the Town Center and felt the Town Center is an under recognized gem for being the most pedestrian friendly, it is a place where she can park, unload her children and spend the entire day visiting stores, restaurants, the library, the grassy area and fountains, coffee shops, and attend cultural events and the farmers market; a big box store open 24 hours was completely out of character for the heart of this area; were Safeway to be located on the periphery area of the City rather than the heart, it would be less of an objection but hardly a necessity; what she felt would better serve the residents were a number of improvements Shapell could make to pedestrian

traffic, creating more shady areas perhaps a small skate park, a branch library, a branch community center, ethnic food services; and thanked the Council for their time.

Rob Means, Milpitas said he wanted to recap from the Milpitas Municipal Code and read that the Town Center is considered as the chief administrative, business, entertainment, and cultural center of the town as a whole; it seemed clear to him that a Super Safeway doesn't fit within that description. Mr. Means further stated that it was his understanding of the legal rules that he must make a legal challenge to this proposal at tonight's public forum; it was his legal challenge that the proposed Super Safeway doesn't conform to the Town Center Zoning; felt Shapell must follow procedures and make appropriate changes to the zoning descriptions first; read another Code section regarding conditional uses; said the Planning Commission, on a 4 to 3 vote, thought that Safeway was acceptable, however, he maintained that Safeway would impair the present and potential uses of adjacent properties; commented that the City Attorney had said it was legal but under this section, he disagreed. Mr. Means asked those in the audience who thought this was an important point to stand.

Constance Stackwood, Milpitas, said she had mixed feelings on this; she felt the grocery stores weren't doing the residents justice, was concerned with traffic, losing the theater and the farmers' market – things that were important that would be in competition with Safeway but she didn't think it was bad for them to try to find something; they lost a lot of business and that wasn't fair, either; if the plan was not exactly the way we want it, maybe it could be changed just a little; and she thought Safeway was a great company but she was concerned with the traffic.

Friedell Barnes, Milpitas, said revitalization, yes, so let's build a beautiful cultural arts center and maybe the San Jose Opera would come to Milpitas to perform; that was what people wanted in Milpitas – not a 24-hour grocery store and asked how many would want to live around a 24-hour grocery store; Safeway was a lovely idea but it was a grocery store and not a cultural arts center or something beautiful; and she didn't want to let a monopoly come in and drive out the small businesses.

Craig Ranker, Milpitas, said he used to live in Mountain View and suggested looking at Mountain View as they have a cultural center in the middle of town adjacent to City Hall; they have a beautiful theater and there is a vibrant evening life and weekend life; there was a lot of economic viability there it was and something he thought Milpitas should take a look at as we have an opportunity to do something similar here like that.

Guy Haas, Milpitas, said he shops for family groceries and finds himself going to more than one grocery store to get what he wants; he also sees some of his friends there but doesn't go there to socialize; he works about a mile from the Riverpark Safeway, a 24-hour operation, but was also disappointed in the store as it didn't do much better; he shops late and used to shop at Albertson's when they were a 24-hour operation but now they close at 2 a.m.

Nalla Sundarajan, Milpitas, said that it was true the Council was listening to the citizens concerns but she was extremely concerned that their voices weren't being heard; after looking at Shapell's beautiful project, she was seriously skeptical about how much weight the citizens' voices had and if they do make a difference; she didn't want more concrete and traffic; another supermarket was not needed and asked how many supermarkets does a 17 sq. mile city need; the people want a community center and somewhere kids can hang around together; she would like to see more fountains, more trees (not palm trees), somewhere citizens can come and have coffee together or another bookstore with a café; asked that the Council hear the voices and come up with some other plan; and suggested the City investigate, along with the Chamber, other possibilities to bring in other businesses and for Shapell to extend the lease on Cinema Saver and make them permanent.

Dean Eaton, Milpitas, said he would rather get a tooth pulled than shop in any of the supermarkets here; he didn't know how they stay in business because service was terrible and prices are high; he was looking for some bargains and Safeway might provide that; Shapell

has invested a lot of money here in all this development and now these people want them to come in with some cultural center; there already is San Francisco and other areas where entertainment is available; he was against the taxpayers buying the Town Center and building something here; suggested the Council go ahead and approve it as he thought another supermarket is needed to get the rest to come up to speed and offer some bargains.

Cyd Mathias, Milpitas, said she liked the idea of additional housing, which she thought would be beneficial; she didn't like the idea of palm trees and didn't like Albertson's, either; however, she would prefer to see a Safeway in her neighborhood on Abel; the Cinema Saver was very important for the teenagers although moving going was not what she considered the best form of entertainment for teenagers, but Cinema Saver was the most affordable way for them to see movies.

Carol Klein, Milpitas, said when she thinks of the Town Center, she thinks of a place where she feels connected with others, a place interesting and fun, a place where she can explore and relax; a Safeway puts her off; when she is grocery shopping, she is doing chores and it was not for fun; if a new grocery store comes into town, she thought it should be located in the Pines because the Pines doesn't have one; and she would like the Cinema Saver to stay.

Donna Eaton, Milpitas said it was true there are several grocery stores but for the income of the residents, there wasn't the quality, one was not even clean, and none offer good service.

Gurmail Kandola, Milpitas, said the loading dock of Safeway would be 300 ft. from his neighborhood and expressed concern about excessive noise and traffic from the delivery trucks; he felt another supermarket was not needed.

Jim Rabe, Milpitas, said he would like to know how someone came up with palm trees with the streetscape plan that we spent all the money on; he was on the Planning Commission when the Town Center was built and remembered everything about what Mr. Means said and didn't remember anybody having a supermarket in the Town Center.

Leslie Padilla, Milpitas, said she wanted to defend Nob Hill but thought Albertson's stinks and was very upset to hear that Cinema Saver might leave; she thought it sounded like when it came before everyone, it was a done deal because of all the money Shapell had already put into the project; she thought Shapell has a right to do exactly what they want but she was very disappointed it wasn't discussed prior to Shapell putting all that money into it; she thought the pedestrian emphasis was nice but nobody walks to Safeway to pick up groceries and walks home again; and asked why tear down an already built theater, where else would they go, and said she would like to see a compromise.

Robert Sallade, Milpitas, said he had heard a lot of emotional speeches but Shapell was only going to listen to the bottom line and the bottom line is customer base but he didn't think they were going to get a lot more customers with Safeway; Safeway abandoned its store and warehouse in Milpitas and he questioned why another Safeway should be allowed when they already abandoned one; he thought the Pines would be a good location; the customer base for Cinema Saver and the Great Mall theaters was equal but the Great Mall generates more cash; and felt what was needed was an upscale clothing store as there were not a lot of better choices.

Ms. Cheung, Milpitas, said she lives on the route of the potential delivery trucks; she attended the meeting where many of her neighbors raised the issue of noise and the sound engineers told them it would be acceptable if they closed their windows; and asked the Council to remember if they approved this, their neighbors would not have a happy living life.

A lady who did not state her name said she heard someone say something about entertainment and she would prefer something like that, she liked the idea of an educational school for dance or karate or a YMCA or a YWCA or the theater to stay not only for the teenagers but for any age and for families, too.

Brandon Farrell, Safeway Real Estate Manager, said he wanted to comment on how Safeway selects sites and what they look at. Mr. Farrell further stated that what they noticed in Milpitas was there is a lack of good conventional grocery stores, there are SaveMart, Albertson's, and Nob Hill but none are adequate and all are below 40,000 sq. ft.; the average size store built today is between 55,000 and 65,000 sq. ft. and the proposed Safeway Store in the Town Center would be 54,000 sq. ft. Mr. Farrell commented on stores in cities of similar size (Pleasanton and Livermore) as Milpitas and noted that Milpitas residents that are shopping at Safeway aren't spending their money in Milpitas; as for a meeting place, Mr. Farrell said this was redevelopment, Safeway and other grocery stores are often considered key components of redevelopment areas, and this is a meeting place in a sense because it brings people there.

There were no further comments.

MOTION to close the public hearing.

M/S: Livengood, Gomez.

Ayes: 4

Abstain: 1 (Esteves)

Councilmember Polanski asked if staff would address the noise issue. Mr. Fujimoto responded there could be some impact from the Safeway and the deliveries, so staff had the applicant submit a noise analysis on the project performed by an independent noise expert whose recommendations were incorporated with the Environmental Document and with the conditions of approval.

Councilmember Livengood said one of the things he likes to do when there is a lot at stake and a lot of different opinions that are somewhat diverse, is to try to figure out how we got here; what happened to lead us to this point where Shapell is asking to redevelop a shopping center into a grocery store and when it was originally built, it wasn't envisioned. Councilmember Livengood recalled the project, going back to 1977 when the land was nothing but weeds and power lines, gave some history about the Redevelopment Agency and the development of the Town Center, and said as a Councilmember, it was not his place to decide where people shop and if they like Safeway, they should have that opportunity to do it in Milpitas and spend their dollars here. Councilmember Livengood further stated he thought Safeway would raise the bar for the other shopping centers and grocery stores and force them to be more competitive; believed Safeway would give the Town Center the life it had 10 or 15 years ago when it was first built and thriving; he understood the concerns about the Cinema Saver but if Safeway was approved and the cinema goes away, he thought the City should be looking full time for a place for the theater to land as he thought it was a valuable asset and didn't want to lose it. Councilmember Livengood said he was compelled to say that none of the statements given swayed him to the point where the Shapell plan was a bad plan or that it would have a detrimental impact on the community; there were some good points made, some of which he agreed with, but he felt the project would be a benefit for the community and help revitalize a very important area of the City. Councilmember Livengood thanked the Rankins for bringing this forward and giving everyone an opportunity to address the issues.

Councilmember Gomez thanked the Rankins for appealing this and giving everyone the opportunity to discuss the matter; he was uncomfortable, as a policy maker, with some of the points brought forward; as a resident he would miss the Cinema Saver. Councilmember Gomez commented on the housing issue noting that the project is using 14 units/acre when the Housing Element allows 21-40/acre; was very comfortable that this project fits the Zoning and General Plan; the competition with other businesses would cause everybody to raise the bar and improve their services; the Cinema Saver has always been on a month-to-month and understood that Shapell was going to redevelop the site but he was glad the Cinema Saver is looking for another location. Councilmember Gomez further stated that Shapell had the same rights as any other developer to redevelop their site and to make it successful, and he was comfortable that the impact would be minimal.

Councilmember Polanski commented that she attended the Grand Opening of the Town Center in 1985; traffic had increased greatly over the years but a lot of the traffic impact in Milpitas was a regional problem that the Council had been trying to address over the years; she was pleased the Cinema Saver was actively seeking to relocate to a permanent place in Milpitas; she knew many Milpitas residents go to Fremont to shop, which is tax dollars going out of this community which meant those tax dollars weren't staying in the community to provide for such services as good police and fire, neighborhood parks, and recreational programs, and she had reviewed the plans and documentation and felt people would be amazed when it was developed. Councilmember Polanski said throughout the years Shapell has worked with the businesses as well as being a good community partner, she believed revitalizing the Town Center would be a big improvement for the citizens, and commended staff and Shapell for the design and presentation.

Vice Mayor Dixon complimented the Rankins on their presentation and noted when the Town Center opened, businesses on Main Street closed and the same comments were heard then as were heard this evening; clarified that the structure Shapell was building on Milpitas Boulevard had been approved over a year ago and would be a Panda Express Restaurant and another store; attempts previously had been made to get a Whole Earth or Trader Joe's in the Town Center but both had said Milpitas did not have the people to sustain such a business and did not meet their criteria; when the Century Theaters went to the Great Mall, the AMC Theaters in the Town Center closed; and Milpitas had tried to get a large supermarket into the Pines neighborhood. Vice Mayor Dixon commented on the City's complicated process to enlarge its Redevelopment Project Area and the development of the Great Mall and felt that because of the synergy of a leader in the grocery field such as Safeway, the City would be hearing from Trader Joe's and Whole Earth; the Cinema Theater was also looking at the Serra Shopping Center as well as the McCarthy Ranch area; and addressing Mr. Mean's comment regarding the original intent of the Town Center, she was on the Planning Commission at the time and it was broadly written to be as flexible as possible to allow as many diverse uses as possible within that District. Vice Mayor Dixon stated that Shapell had been a very good community neighbor and leader in Milpitas, they had financially contributed to Milpitas schools over the years, are a major contributor to the arts in the City, they allowed Mr. Means to place his PRT on their property for two weeks, and they let the Community Museum in free for six years. Vice Mayor Dixon said the City would be working with the farmers market to find a space for it, she appreciated all the comments tonight, the services the City provides for its citizens do not come free but come out of the City's ability to balance housing, shopping, jobs, maintaining traffic circulation, etc., and this was what fuels the services residents receive.

MOTION to uphold the Planning Commission's approval of S-Zone (SZ2003-12 & 13) and Use Permits No. UP2002-42 & 43, UP2003-57 & 58, and UP2004-1.

M/S: Livengood, Gomez. Ayes: 4 Abstain: 1 (Esteves)

Assistant City Manager Blair King read the title of Ordinance No. 124.26 amending Chapter 30, Title XI of the Milpitas Municipal Code to increase the number of freestanding signs in the Town Center Zoning District.

MOTION to waive the reading beyond the title.

M/S: Livengood, Gomez. Ayes: 4 Abstain: 2 (Esteves)

MOTION to introduce Ordinance No. 124.26.

M/S: Livengood, Polanski. Ayes: 4 Abstain: 1 (Esteves)

RECESS

Vice Mayor Dixon recessed the City Council meeting at 10:37 p.m. The City Council meeting reconvened at 10:46 p.m. with Mayor Esteves presiding.

4.
Water/Sewer Rates
Service Charges & Penalties

Principal Civil Engineer Darryl Wong reported this item was the proposed 2004/05 water and sewer rates and a proposal on utility penalties. Using a PowerPoint presentation, Mr. Wong reviewed the 2003 Financial Utility Master Plan guidelines and reported that the anticipated 2004/05 water and wastewater sales amount expected to be flat compared to 2003/04 and wholesale water and recycle water rates would increase (San Francisco PUC by 5%, Santa Clara Valley Water District by 7.6%, and South Bay Water Recycling by 34%). Mr. Wong reviewed the recommended increases for residential customers (an increase of \$3.14 per month), for Ed Levin Park (from \$1.07 to \$1.16/hcf), the City rate (from \$1.06 to \$1.15/hcf), and all others (quantity and fixed charges 11.9%). Mr. Wong showed a slide summarizing all recommended changes for water and recycled water. Mr. Wong reviewed proposed sewer rate increases due to the City's operating costs and what the City pays for the Water Pollution Control Plant. Mr. Wong said single-family residential rates were proposed to increase \$2.08 per month and all other customer rates were based on strength of discharges. Mr. Wong showed a slide summarizing all proposed sewer rate changes and a utility charge comparison with other cities showing Milpitas as slightly below the average.

Mr. Wong reported the City sends out approximately 22,000 delinquent notices per year (approximately 25% of all bills) and to deter these late payments, staff proposed a late payment charge for water, recycled water, sewer and solid waste of 5% of the unpaid balance if the regular bill is not paid; an additional 5% if the reminder notice is not paid, \$10 for the 24-hour shut-off notice, and a \$50 charge for reconnection during business hours and \$75 if after business hours; in addition, a \$150 per occurrence for tampering with City property, such as breaking the lock or meter, and a charge of \$14.75 per hcf measured on the meter for use of fire service water above 1 hcf per billing period. Mr. Wong reviewed the recommendations to close the public hearing, waive reading beyond the titles, and introduce the three ordinances.

Councilmember Gomez asked how would residents be alerted about the new charges. Mr. Wong responded after the ordinances are adopted, notices would be sent out to all customers, about a six-week notice.

Vice Mayor Dixon said she tried to compare her utility bill with the report but it was too confusing. Vice Mayor Dixon commented that since this was the first time for doing this, she knew it would help but expressed concern that six-weeks notice might not be enough. Vice Mayor Dixon also expressed concern for residences where the meter reader can't get to the meter because of overgrown vegetation and in some cases has to cut away the weeds and vegetation. Mr. Wong said that some of the meter readers do spend some time clearing access. Vice Mayor Dixon said she thought there should be a charge for not making sure a meter is exposed. Mr. Wong responded that he would feel comfortable including something like that into the ordinance if there was an access problem and the customer doesn't correct it. Vice Mayor Dixon asked if there was a record kept. Finance Director Emma Karlen responded that staff was aware that this was sometimes a problem, when staff looked into imposing some of these late penalties this was also considered but it was difficult to determine how long a time it takes to clear a meter because each situation was different.

Vice Mayor Dixon commented that the comparison chart for water showed that even with the increase, Milpitas seemed to be in line with other cities but for sewer, Milpitas seemed to far exceed everyone else. Mr. Wong responded that Milpitas' buy-in at the Water Pollution Plant was higher than neighboring cities because Milpitas bought in later; staff was trying to normalize that but Milpitas started out later than some of the other cities.

Councilmember Polanski inquired, with regard to the penalties for breaking City property, how would she keep somebody from opening up her meter and tampering with it. Mr. Wong responded the problem wasn't with people getting into it; it was when the meter is locked off and people are trying to get water.

Mayor Esteves commented that this was discussed with the Utility Subcommittee, comprised of the Mayor and Councilmember Livengood, he knew the penalty was to deter delinquent

payments and asked how uncollected accounts were being addressed. Finance Director Karlen responded that currently a \$150 deposit is imposed for new accounts, which helps a little with any uncollected account; staff did bring to the Council a policy that if an uncollected account was over a certain amount, it is taken to Small Claims Court but that would not be economical for small amounts. Mayor Esteves asked how much in uncollected accounts were there in terms of numbers and amounts. Ms. Karlen responded she didn't have the number in front of her but when it was brought to the Council last August, a couple of the larger accounts were over \$50,000 and the rest were smaller, averaging \$100-\$150.

Mayor Esteves said he thought the penalty was good but uncollected accounts could be lost money so maybe when this comes back, staff could think of other ways in addition to Small Claims Court.

Mayor Esteves opened the public hearing and invited comments. There were none.

MOTION to close the public hearing.

M/S: Polanski, Livengood.

Ayes: 5

Principal Civil Engineer Wong read the titles of Ordinance No. 120.42, an Ordinance of the City of Milpitas amending Sections 6.05, 6.09, 6.10, 6.11, 6.13, 6.14, 6.15, 6.16, and 6.17, Chapter 1, Title VIII of the Milpitas Municipal Code relating to construction water, time for payment, discontinuance of service, restoration of discontinued service, quantity charges, bimonthly water meter charges, fire service charges, effective date of water rates and meter maintenance, respectively; Ordinance No. 208.389, an ordinance of the City of Milpitas amending Title VIII, Chapter 2, Sections 6.01, 6.03, and 6.04 of the Milpitas Municipal Code relating to sewer service charges, authority to disconnect, and payment for sewage services, respectively; and Ordinance No. 48.15, an Ordinance of the City of Milpitas amending Section 9, chapter 200, Title V of the Milpitas Municipal Code relating to termination of water service for nonpayment of solid waste collection charges and fees.

MOTION to waive the readings of all three ordinances beyond the titles.

M/S: Livengood, Gomez.

Ayes: 5

MOTION to introduce Ordinance No. 120.42, Ordinance No. 208.389, and Ordinance No. 48.15.

M/S: Livengood, Gomez.

Ayes: 5

JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. CALL TO ORDER

Mayor Esteves called to order the regular meeting of the Milpitas Redevelopment Agency, meeting jointly with the City Council, at 11:15 p.m.

RA2. ROLL CALL

Present were Mayor Esteves, Vice Mayor Dixon, and Agency/Councilmembers Gomez, Livengood, and Polanski.

RA3. MINUTES

MOTION to approve the Redevelopment Agency minutes of May 4, 2004, including joint meeting with the City Council, as submitted.

M/S: Gomez, Livengood.

Ayes: 5

RA4. AGENDA

MOTION to approve the Agenda and Consent Calendar as submitted.

M/S: Gomez, Livengood.

Ayes: 5

RA5.

Mayor Esteves announced that since this item pertained to the Town Center, he would be

**SHAPELL INDUSTRIES MOU
AFFORDABLE HOUSING**

abstaining and passed the gavel to Vice Mayor Dixon and left the Council Chambers.

Principal Housing Planner Felix Reliford reported this item was being submitted in conjunction with items 2 and 3 on the Council agenda and involved the development of a 65-unit town home project and redevelopment of the Town Center. Mr. Reliford reported staff was recommending the Agency adopt a resolution approving a Memorandum of Understanding with Shapell Industries providing loan assistance to facilitate the construction of 20 deed-restricted affordable housing units consisting of 16 moderate-income units and 4 very low-income units (consisting of the rehabilitation of rental units off-site with deed restrictions); in return for the Agency's financial assistance with four off-site units, the developer will fund and/or construct on and off-site improvements benefiting the public valued at \$392,000; the total value of the proposed Agency assistance in loans and grant is \$1 million (pledged in the form of silent second loans of \$50,000/unit, for a total of \$800,000, and \$200,000 for the rehabilitation of the four off-site units).

Vice Mayor Dixon inquired if the process for the affordable units would be the same as was used for the Parc Metro development with priority being given to teachers. Mr. Reliford responded the Council had set a policy that included a priority for Milpitas residents, teachers, and City employees. Vice Mayor Dixon asked for confirmation that the applicant was in agreement. Mr. Reliford responded yes.

MOTION to adopt Resolution No. RA219 of the Redevelopment Agency approving a Memorandum of Understanding by and between the Redevelopment Agency of the City of Milpitas and Shapell Industries of Northern California.

M/S: Polanski, Gomez.

Ayes: 4

Abstain: 1 (Esteves)

Mayor Esteves returned to the dais.

**RA6.
LIBRARY PROJECT
UPDATE**

Assistant City Engineer Greg Armendariz presented an update on the Library project reporting that the architect selection process was underway and highlighting upcoming project milestones. Mr. Armendariz reported that a two-part request for proposals for a design architect had been issued; a fee portion would be required only of the short list; and the interviews would be video taped. Mr. Armendariz further reported that 60 consultants attended the pre-proposal conference on April 15, 21, and 28; proposals were due May 10; the proposals would be evaluated and the short list developed by May 17; the first round of interviews was scheduled for May 20; the results would be presented to the Library Subcommittee on May 25; the second round of interviews would be scheduled the week of June 14; by June 22 a final selection would be made; and on July 6 the contract for architectural services would be presented to the Council. Mr. Armendariz noted that staff was also actively advancing various other Library-related projects.

Mayor Esteves commented that this was also discussed by the Library Subcommittee comprised of the Mayor and Councilmember Livengood.

MOTION to note receipt and file Library Project progress report.

M/S: Gomez, Polanski.

Ayes: 5

**RA7.
FINANCIAL STATUS
REPORT (9 MONTHS)**

Finance Director Emma Karlen presented the City's Financial Status Report for the nine months ended March 31, 2004, reporting that the regional unemployment rate was higher than for the Nation and State; sales tax revenue recovery was still lagging in Santa Clara County; and General Fund revenue for the nine months was down 6.6% from the previous year. Ms. Karlen further reported that General Fund revenue projections had been revised downward approximately \$275,000 and over all approximately \$3.05 million below the adopted budget. Ms. Karlen reviewed expenditures commenting that General Fund expenditures at the end of March remained under budget (70.3% v. 75%) resulting in a savings of approximately \$2.8 million at the end of the fiscal year. Ms. Karlen reviewed the General Fund projected use of

Reserves noting a revised number of \$5.59 million, which was about \$275,000 off from the budget. Ms. Karlen reported that the General Fund Reserve balance was on target; looking at the reserve fund history last 10 years, because the City was able to build up the reserve balance in the last few years, the City was able to use some of the saving now to continue providing services to the community and still maintain a 15% reserve fund balance.

Councilmember Livengood inquired where the \$5 million was that was set aside for the Library. Ms. Karlen responded it was with the Library fund and so wasn't shown here. Councilmember Livengood commented the number that was the most alarming to him was the General Fund revenue collected as of the first three quarters and asked what that number would be at the end of the fiscal year. Ms. Karlen responded she projected about 7 or 8 percent less than the budget (93%).

Mayor Esteves, referring to the projected use of reserves, inquired if staff was already assuming the deficit would be filled out by the use of reserves. Ms. Karlen responded the use of reserves was projected when the budget was adopted. Mayor Esteves commented that this was more than the budgeted amount (\$5.9 million v. \$5.32 million) and asked if it was assumed that reserves would totally cover the \$5.9 million deficit. Ms. Karlen said right now based on nine months, the budget was about \$270,000 off but that amount might still be made up with additional revenue or additional savings, so it was hard to say exactly. City Manager Tom Wilson added that it was a presumption only, staff didn't know what the gap may be, there may be some revenue increases in the last quarter and if there is a need to utilize more reserves because we simple don't meet the revenue projection, then staff would have to come back to the Council. Mayor Esteves asked for confirmation that this picture was not the automatic use of reserves. Ms. Karlen said it was to give the Council what could potentially happen at the end of the year. City Manager Wilson added that it has to be approved by the Council and this was just a prediction and just trying to give the Council a heads up.

MOTION to note receipt and file.

M/S: Gomez, Polanski.

Ayes: 5

***RA8.
INVESTMENT STATUS**

Noted receipt and filed the investment report for the quarter ended March 31, 2004.

***RA9.
INITIAL ACCEPTANCE**

1. Adopted Resolution No. 7399 approving initial acceptance of ACCO's contract and authorizing the RDA Project Manager to file a Notice of Completion and release \$86,594.15 from the retention account, remaining retention to be released in accordance with the Public Contract Code; and

2. Adopted Resolution No. 7400 approving initial acceptance of Royal Glass contract and authorizing the RDA Project Manager to file a Notice of Completion and release retention in accordance with the Public Contract Code.

**RA10.
ADJOURNMENT**

There being no further Redevelopment Agency business, Mayor Esteves adjourned the Redevelopment Agency meeting at 11:37 p.m.

COUNCIL ADJOURNMENT

There being no further Council business, Mayor Esteves adjourned the City Council meeting at 11:37 p.m.

Gail Blalock, City Clerk

**The foregoing minutes were approved by the City Council as submitted on
May 18, 2004.**

Gail Blalock, City Clerk

Date

APPROVED MINUTES
CITY OF MILPITAS

Minutes:	Regular Meeting of Milpitas City Council (Including Joint Meeting with Redevelopment Agency)
Date of Meeting:	April 20, 2004
Time of Meeting:	6:00 p.m. (Closed Session) 7:00 p.m. (Regular Session)
Place of Meeting:	City Hall Council Chambers, 455 E. Calaveras Blvd.

ROLL CALL

Mayor Esteves called to order the regular meeting of the Milpitas City Council at 6:00 p.m. Present were: Mayor Esteves, Vice Mayor Dixon, and Councilmembers Gomez (arrived 6:03 p.m.), Livengood (arrived 6:03 p.m.), and Polanski.

CLOSED SESSION

Mayor Esteves publicly stated the Council would convene in Closed Session to discuss the following items listed on the agenda, commenting that the third item would not be discussed.

1. CONFERENCE WITH REAL PROPERTY NEGOTIATOR

(Pursuant to Government Code Section 54956.8)

Property: APN #022-08-042

Negotiating Parties: City of Milpitas and County of Santa Clara

Agency Negotiator: Thomas J. Wilson

Under Negotiation: Terms and Conditions for Disposition or Lease

2. CONFERENCE WITH REAL PROPERTY NEGOTIATOR

(Pursuant to Government Code Section 54956.8)

Property: APN #86-12-015, 86-12-016, and 86-12-020

Negotiating Parties: Milpitas Redevelopment Agency/City and Abel Trust

Agency Negotiator: Thomas J. Wilson

Under Negotiation: Terms and Conditions for Acquisition of Property

3. CONFERENCE WITH REAL PROPERTY NEGOTIATOR

(Pursuant to Government Code Section 54956.8)

Property: Vacant Property N. Main Street (APN No. 2208003)

Negotiating Parties: City of Milpitas/Milpitas Redevelopment Agency and Kathleen Cardoza

Agency Negotiators: Thomas J. Wilson and Blair King

Under Negotiation: Terms and conditions for acquisition of property

4. CONFERENCE WITH REAL PROPERTY NEGOTIATOR

(Pursuant to Government Code Section 54956.8)

Property: Winsor and Rodriquez properties (adjacent to Main St. off ramp of Calaveras Blvd.) (APN Nos. 2824014, 2824020, 2824026 and 2824025)

Negotiating Parties: City of Milpitas/Milpitas Redevelopment Agency and Winsor, Rodriquez, Garbe's Towing and Economy Towing.

Agency Negotiators: Thomas J. Wilson/Greg Armendariz

Under Negotiation: Terms and conditions for acquisition of property and rental interests

Mayor Esteves adjourned the meeting to closed session at 6:02 p.m.

The City Council meeting reconvened at 7:06 p.m. with Mayor Esteves presiding and Vice Mayor Dixon and Councilmembers Livengood, Polanski, and Gomez present.

**CLOSED SESSION
ANNOUNCEMENTS**

City Attorney Steve Mattas announced that the Council, by a vote of 5 to 0, provided authority for staff to conclude negotiations and discussions with Economy Towing related to property they rent on the Winsor property on Main Street, and staff will be implementing that direction.

PLEDGE

Members of Troop No. 92 led the Council and audience in the Pledge of Allegiance.

MINUTES

MOTION to approve the City Council minutes of April 6, 2004, including joint meeting with the Redevelopment Agency, as submitted.

M/S: Gomez, Livengood.

Ayes: 5

SCHEDULE

Councilmember Polanski reported the May 13, 2004, Santa Clara Valley Transportation Authority PAC meeting shown at 5:00 p.m. was actually scheduled for 4:00 p.m. at the VTA, and she now was the representative since Vice Mayor Dixon is on the VTA Board.

MOTION to approve the Schedule of Meetings as amended.

M/S: Livengood, Dixon.

Ayes: 5

PRESENTATIONS

Mayor Esteves said the first item was to present Commendations to the cast of the Rainbow Theater's production of Chicago presented at the High School, many were from the City's Youth Advisory Commission; he was very excited and pleased to be able to watch the show; it was like having a nice Broadway show in Milpitas, and thanked the students for providing a wonderful entertaining show for the community. Mayor Esteves invited Anne Kelly, Rainbow Theater Director to join him at the podium. Ms. Kelly expressed appreciation to Milpitas High School for its contributions, especially the students, who made this production possible and thanked all the cast, crew, and musicians who participated in making the production a success. Ms. Kelly read the following names as Mayor Esteves presented Commendations to the students who were present:

Coel Agustin	Jackie Holland	Keith Menconi
Casey Atud	Holly Howe	Jennifer Nguyen
Charlotte Beard	Sarah Hudson	Jamie Parreno
Samantha Beard	Deana Jensen	Kirstin Plato
Laura Castaneda	Macacla Jensen	Ryan Robinson
Zarina Dhami	Htoi Lahpai	Kristin Schmitz
Sarah Erbele	Robbie Lin	Peonie Seesurat
Johnson Eung	Bianca Martinez	Celeste Thompson
Conrad Gabriel	Danae Matthews	Lenine Umali
Julian Hilario, Jr.	Nicole Matthews	Anne Villaruz
Yvonne Hoang		

Mayor Esteves read a Proclamation proclaiming April 18-24, 2004, as "Volunteer Week" in recognition of City of Milpitas Volunteers and presented it to Ed Wagner, Milpitas Senior Volunteer working at the Police Department. Mr. Wagner said he was honored and proud to be a Milpitas volunteer.

Mayor Esteves read a Proclamation proclaiming April 2004 as "Volunteer Month" recognizing the Volunteer Center of Silicon Valley for its contributions to Santa Clara County and the City of Milpitas and presented it to Peter Verneulen, representing the Volunteer Center of Silicon Valley. Mr. Verneulen expressed the Center's sincere gratitude and that it was an honor to receive the proclamation.

Mayor Esteves read a Proclamation proclaiming the month of April 2004 as "Alcohol Awareness Month" in recognition of the National Council on Alcoholism and Drug Dependence in the Silicon Valley, and presented it to Gabrielle Antolovich, Executive Director of the National Council on Alcoholism and Drug Dependence in the Silicon Valley. Ms. Antolovich thanked the Council for the recognition, stating that she was a recovering alcoholic; wanted people to realize that you don't have to be an alcoholic to have a problem, and left copies of a newspaper that the organization put out for anyone who wished a copy.

CITIZENS FORUM

Mayor Esteves invited members of the audience to address the Council on any subject not on

the agenda, requesting that remarks, including any visual or technology-assisted presentations of any kind, be limited to two minutes or less, and noted that the City Clerk would be using the timer and when the red light at the podium came on, two minutes would be up.

Jeff LeValley, Milpitas, expressed concern that the City has no ordinance prohibiting someone from sleeping in a car on a public street. Mr. LeValley described a situation in his neighborhood with a person who was down on his luck sleeping in his car; his wife and children were uncomfortable with the situation and when Mr. LeValley checked with the City, he was told he needed to get an ordinance going to address this type of situation. Mr. LeValley said the situation in his neighborhood appeared to be over, but he was concerned about what to do the next time around. Mayor Esteves asked staff to get in touch with Mr. LeValley and, hopefully, come back to the Council with some recommendations.

Rob Means, Milpitas, commented about an article in the Christian Science Monitor earlier this month that talked about your own personal monorail and a survey done in Cardiff, Wales that showed 71% of Welsh passengers who used public transportation said they'd pay more for PRT than buses and 11% said they'd pay as much as they'd pay for a taxi.

Frank De Smidt reminded everyone of the State of the City Address at City Hall tomorrow night, sponsored by the Chamber, and invited everyone to attend. Mr. De Smidt also invited everyone to the next Chamber Mixer on Thursday, 5:00-7:00 p.m. in the Town Center.

ANNOUNCEMENTS

Councilmember Polanski commented on the truly amazing Earth Day events sponsored by the City at Yellowstone Park on Saturday, six trees were planted by the Tree Amigos, and thanked the Commissioners who came and volunteered.

Vice Mayor Dixon announced that this Thursday she would be Chairing the Santa Clara Valley Joint Powers Authority Board for the library system where they would be addressing the fallout from the recent failed library measure, the budget will be looked at in anticipation of a \$2.6 billion revenue loss due in large part to a local property tax take-away from the Governor's proposed budget resulting in a 30% reduction to the materials budget, deletion of current vacancies, and significant reductions in the hours of operation at each library effective November 1, 2004. Vice Mayor Dixon also reported last week she attended Carl Guardino's/Manufacturing Group's quarterly luncheon; the guest speaker was Senator Diane Feinstein who expressed her firm commitment to help in gaining increased funds for transportation.

Mayor Esteves said he participated in "Reading Across America" by reading to children at Weller Elementary School, felt it was a good way of telling our children that we have to read and we have to read more, and thanked the parents and teachers for volunteering and the children for listening. Mayor Esteves further stated Arbor Day or Earth Day was not just trees but was also greening of the City of Milpitas by conservation of energy in buildings, City Hall was an example of a green building, and the City's future buildings will be green as well. Mayor Esteves announced that the Tsu Chi Foundation would be sponsoring a free Health Fair on May 2, 1-5:00 p.m. at 175 Dempsey Road.

AGENDA

MOTION to approve the agenda as submitted.

M/S: Gomez, Polanski.

Ayes: 5

CONSENT CALENDAR

Mayor Esteves inquired if anyone wished to make any changes to the Consent Calendar. Councilmember Gomez asked that item 7 (City Newsletter) be removed for discussion.

MOTION to approve the Consent Calendar, items with asterisks on the agenda, as amended by the removal of item 7, in accordance with the staff recommendations.

M/S: Livengood, Polanski.

Ayes: 5

- *5. Parks, Recreation and Cultural Resources Work Plan** Approved the 2004 Parks, Recreation and Cultural Resources Commission Work Plan.
- *9. Marquee Request** Approved request from Friends of the Library to use the City Marquee (April 21-April 25) to promote Milpitas Library book sale.
- *10. Ordinance No. 38.763**
1. Waived full reading of ordinance; and
 2. Adopt Ordinance No. 38.763 (Zoning Ordinance Text Amendment No. ZT2004-1), amending Title XI, Chapter 10 of the Milpitas Municipal Code
- *11. Ordinance No. 43.200**
1. Waived full reading of the ordinance; and
 2. Adopted Ordinance 43.200 amending Title V (Traffic), Chapter 100, of the Milpitas Municipal Code.
- *12. Comcast Franchise** Adopted Resolution No. 7397 granting a one-year extension to the existing franchise agreement with Comcast to allow for the completion of franchise negotiations.
- *13. Calaveras Road Slope Repair (Project No. 4029)** Adopted Resolution No. 7398 granting final acceptance and releasing the bond.
- *14. San Francisco Public Utilities Commission (Project No. 6082)** Authorized the City Manager to execute the Revocable Permit with the San Francisco Public Utilities Commission needed to construct on-site recycled water pipelines over the Hetch-Hetchy right-of-way at Sandalwood Park and the Escuela Parkway median in front of the high school.
- *15. GTE Mobilenet of California** Authorized approval of lease agreement with GTE Mobilenet of California to lease space at the Milpitas Sports Center for the installation of a cellular communications site, subject to approval as to form by the City Attorney. (The lease will be for an initial period of five years with options for extension. The base rent will be \$19,800 annually, which will be subject to a 3% annual adjustment over the period of the lease.)
- *16. City of Fremont – Tennis Center** Approved joint powers agreement for City of Fremont - Tennis Center to provide tennis lessons through Milpitas Recreation Services from March 23, 2004, until termination by either party without cause upon thirty (30) days written notice to the other party.
- *17. Great Mall Parkway (Project No. 4133)** Awarded contract to Watkin & Bortolussi, Inc., in the amount of \$181,867.00, subject to approval as to form by the City Attorney, for street trees and mulch for Great Mall Parkway (Project No. 4133).
- *18. Great Mall Parkway and Tasman/I-880 Vehicle Capacity Improvements (Project No. 4178)** Authorized the City Manager to execute the agreement amendment with Korve Engineering, in the amount of \$27,000.00, subject to approval as to form by the City Attorney, for Great Mall Parkway and Tasman/I-880 Vehicle Capacity Improvements (Project No. 4178) to perform additional design services to incorporate the new light rail improvements into the intersection design, and to incorporate 237/880 Interchange Stage C change order work into the design of the southbound off ramp; and for Caltrans required project study report (PSR) as part of its permit approval for this project. (Korve Engineering will provide assistance in preparing the PSR for this project.)
- *19. Great Mall Parkway and Tasman/I-880 Vehicle Capacity Improvements (Project No. 4178)** Authorized the City Manager to enter into the agreement with Lowney Associates for geotechnical services in the amount of \$27,000.00, subject to approval as to form by the City Attorney, for Great Mall Parkway and Tasman/I-880 Vehicle Capacity Improvements (Project No. 4178).
- *20. Right Turn Lane at Abel/** Authorized the City Manager to execute agreement amendment with Korve Engineering, in the amount of \$25,000, subject to approval as to form by the City Attorney, to perform

Calaveras (Project No. 4186)

additional services to provide right of way engineering, traffic analysis, pavement design and assistance to City staff in obtaining Caltrans approval.

***21.
Singley Area Street
Rehabilitation – Phase III
(Project No. 4200)**

1. Approved Amendment No. 1 to the agreement with DE Group to provide additional services to design Marylinn Drive Sidewalk, (Project No. 4222), and include additional roadways in the Singley area due to its deteriorated condition.
2. Authorized the City Manager to execute the amendment, subject to approval by the City Attorney as to form.

***22.
Video Streaming Equipment
(Project No. 8142)**

Authorized the City Manager to approve the 1st Amendment to the Master Service between Granicus Inc. and the City of Milpitas, extending the term through June 2007 and increasing the agreement by \$26,000, to ensure continuation of the live web streaming of City Council meetings, Planning Commission meetings and special City events; and to acquire additional storage hardware that will be maintained by the City for accessing video archives that are older than six months.

***23.
Miscellaneous Vendors**

Approved purchase request in the amount of \$5,298.84 to Edward S Walsh, Co. to purchase a large 8-inch record all combination water meter for the Utility Maintenance Function. (Funds are available from the Public Works Department operating budget for this purchase.)

PUBLIC HEARINGS

**1.
Entertainment Permit
Rotary Carnival**

City Clerk Gail Blalock reported this item was a request for an Entertainment Event Permit submitted by the Milpitas Rotary Club to hold a Carnival in the Wal-Mart parking lot at McCarthy Ranch on May 13-16, 2004; it was the third year the Rotary Club had sponsored a Carnival at that location; the application had been reviewed and approved by the various City departments, subject to some conditions, and the public hearing had been advertised. Ms. Blalock noted that the application had originally requested waiver of the fire watch fees; however, fire standby personnel would not be required based on the past experience with the Rotary Carnival. In response to question from Mayor Esteves regarding the fire watch fees, Fire Chief Bill Weisgerber reported that ordinarily an event of this nature would be required to provide fire watch for security of life safety provision; however, based on experience at previous Carnival events, the Rotary Club had adequately addressed all fire concerns.

Todd Flesner, representing the Rotary Club, said the Club was excited to be able to host this family Carnival; the Rotary Club was dedicated to service the community; this was their major fund raiser; money received from the event would stay in Milpitas for the majority of the cases; Martha's Kitchen in Nicaragua was an international project the Rotary Club sponsored and another project was seven scholarships for Milpitas High School students.

Mayor Esteves opened the public hearing and invited comments. There were no requests.

MOTION to closed the public hearing.

M/S: Dixon, Livengood.

Ayes: 5

MOTION to approve the Entertainment Event Permit for the Milpitas Rotary Club for a Carnival on May 13-16, 2004, at the Wal-Mart parking lot at McCarthy Ranch, subject to the special conditions noted.

M/S: Dixon, Livengood.

Ayes: 5

**2.
CDBG Funding FY 2004-05
One-Year Action Plan**

Senior Housing/Neighborhood Preservation Analyst Anaya reported the purpose of this public hearing was to establish funding levels and use of the Community Development Block Grant (CDBG) funding for FY 2004-05 and to adopt the one year action plan; the City's estimated grant for FY 2004-05 was approximately \$711,000 (\$15,000 less than the current year); 22 applications had been received for CDBG funding; 19 applications requested funding for Public Services, and a total of \$106,650 was available for this funding category;

and a total of \$462,150 was available to fund non-public services. Ms. Anaya further reported at its March 3, 2004, meeting, the Community Advisory Commission (CAC) held a public hearing and reviewed the CDBG applications; the CAC was recommending \$711,000 in total funding, including \$121,650 for Public Services (\$15,000 of this amount would come from the 20% CDBG General Program Administration funds to cover Project Sentinel's Fair Housing activities); the remaining \$127,200 of the grant was committed for general program administration; the applicants had received a copy of the CAC's recommendations, were notified of this public hearing, and advised to be present to answer any questions the Council may have.

Principal Housing Planner Felix Reliford reported the One-Year Action Plan identified the eligible programs, projects, and activities to be undertaken with the CDBG funds expected to be available during the FY 2004-05 program year; as required by HUD, the Action Plan was advertised for 30 days for public review and comments; no public comments were received; copies of the Action Plan were sent to 22 public service providers, and copies were also placed at City Hall and the public library.

Vice Mayor Dixon, addressing the Action Plan, questioned why the City had not participated in the Home Program. Mr. Reliford explained that since Milpitas is a smaller city, it needed to go through the State; staff had been in contact with State representatives and was working to achieve the thresholds needed to participate in the program. Vice Mayor Dixon inquired if the Home Program could be used for the Midtown area in conjunction with other groups. Mr. Reliford responded the eligible activities of the Home Program were similar to the CDBG Program.

Vice Mayor Dixon, addressing the Section 8 Rental Assistance Program, questioned if the 104 families on the waiting list was in the normal range or was it an increase. Mr. Reliford said it was actually a decrease.

Vice Mayor Dixon, addressing a recent newspaper article possibly put out by the Building Industry grading various cities on what they were doing for housing (affordable and fair market), expressed concern that Milpitas did not get a good rating; she was astounded to see (under Redevelopment) that Milpitas had put \$36 million into housing and got about 618 rentals out of that versus the regular fair market; she thought Milpitas was doing quite well. Mr. Reliford commented that Milpitas had 1,100 dwelling units on the drawing board (including KB), and he was confident Milpitas would get its 20 percent fair share of the 1,100 units.

Vice Mayor Dixon, addressing KB, questioned if staff had any information on what KB's participation would be with a senior apartment complex. City Manager Wilson commented that staff would be bringing a MOU at the next Council meeting and that KB's participation would be substantial.

Vice Mayor Dixon, addressing the Mobile Home Park Rent Control Ordinance section that talked about 70% of mobile home park residents are senior citizens, questioned when the last survey was taken. Mr. Reliford said that survey had taken place in early 2000-2001 and another survey could be done.

Vice Mayor Dixon, referring to page 13 under Land Use and Zoning where it stated over 500 acres of land from Commercial/Industrial had been zoned for housing developments, thought the Council might look at going over areas that are currently zoned Industrial and determine if that was the way Milpitas should be going.

Councilmember Polanski noted that CAC Chair Iloreta and Commission Mohsin were in the audience to answer questions the Council may have; the CAC Commissioners felt the workshop had been very beneficial, and she thought the CAC did a superb job in looking at all the applications and the available money.

Mayor Esteves said he had the opportunity to drop by the CAC meeting and observe the process and congratulated staff and the CAC for its work on the CDBG grant funding.

Mayor Esteves opened the public hearing and invited comments. There were no requests.

MOTION to close the public hearing.

M/S: Gomez, Livengood.

Ayes: 5

MOTION to:

1. Approve the CAC recommendations for FY 2004-05 CDBG funding, as submitted.
2. Adopt the One-year Action Plan.

M/S: Polanski, Gomez.

Ayes: 5

**3.
Countywide Non-Disposal
Facility Element
Sixth Amendment**

Principal Civil Engineer Darryl Wong reported this public hearing was required for Council approval of a Non-Disposal Facility Element amendment to identify a recycling facility located in Milpitas. Mr. Wong further reported that Environmental Management Systems, 945 Ames Avenue, collects and sorts material from construction sites for reuse; the facility is required to apply and receive a State Solid Waste Facility permit in order to continue to operate; State law requires that any jurisdiction that will be the site of a new non-disposal facility, such as Environmental Management Systems, first adopt an NDFE amendment identifying the facility as part of the NDFE in order for a State Solid Waste Facility Permit to be issued for that site. Mr. Wong explained that EMS proposes to recycle material and will accept recycled material from the public; the material proposed for use included non-hazardous materials and excluded tires, California redemption containers, and green waste; once approval is granted, it will allow them to actually take the material and sort the material on site for resale. Mr. Wong further stated the approval was recommended by the County Recycling and Waste Reduction Commission, which Mayor Esteves Chairs, in October 2003. Mr. Wong noted that John Garcia, President of the Company, was present.

Vice Mayor Dixon, commenting that Mr. Wong had said green waste would specifically be excluded, inquired if green waste would be the primary component that would cause or contribute to the odor problem that was being regulated at the other landfill/composting site. Mr. Wong responded that green waste had the propensity over a period of time, if not handled properly, to decompose and form noxious odors.

Mayor Esteves opened the public hearing and invited comments. There were none.

MOTION to close the public hearing.

MS: Livengood, Gomez.

Ayes: 5

MOTION to adopt Resolution No. 7396 approving the sixth amendment to the County of Santa Clara countywide non-disposal facility element.

M/S: Livengood, Polanski.

Ayes: 5

JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

**RA1.
CALL TO ORDER**

Mayor Esteves called to order the regular meeting of the Milpitas Redevelopment Agency, meeting jointly with the City Council, at 8:08 p.m.

**RA2.
ROLL CALL**

Present were Mayor Esteves, Vice Mayor Dixon, and Agency/Councilmembers Gomez, Livengood, and Polanski.

RA3.

MOTION to approve the Redevelopment Agency minutes of April 6, 2004, including

MINUTES

joint meeting with the City Council, as submitted.

M/S: Gomez, Livengood.

Ayes: 5

RA4. AGENDA

MOTION to approve the Agenda as submitted.

M/S: Livengood, Gomez.

Ayes: 5

RA5. DRAFT 2004-09 CAPITAL IMPROVEMENT PROGRAM

City Engineer Mike McNeely reviewed the draft annual Capital Improvement Program for 2004-2009 using a PowerPoint slide presentation, first highlighting current accomplishments that included the nine projects completed in the current fiscal year; ten projects with significant progress; Community Improvement Projects (Interim Senior Center, City Hall third and fourth floor completion, the Library pre-design study, GIS); Parks Projects (Dog Park, Playground Equipment upgrades completed at four parks, Art-in-Your-Park improvements at Murphy and Hillcrest Parks); Street Projects (237/1880 Interchange, which received the APWA South Bay Project of the Year Award, Dixon/1880 Interchange, Piedmont Road Bike Path and sidewalk improvements, Silicon Valley Intelligent Transportation Systems, Library Design); and Utilities (Hillside water system). Mr. McNeely summarized that nine projects were under construction, 51 projects were in design, 15 were in warranty (post construction), and 15 other projects were in report, study, or technology improvement stages.

For next year, Mr. McNeely reported the CIP had been reviewed by the Parks, Recreation, and Cultural Resources Commission and the Planning Commission reviewed and approved it and found it in conformance with the General Plan. Mr. McNeely further reported staff planned to continue with an aggressive program to complete about \$15 million in projects by June 2005 with heavy concentration in the Midtown Area focusing on 17 projects, public and private, to implement the vision the Midtown represents. Mr. McNeely reviewed Community Improvement, Park Improvement, Street Improvement, and Water, Sewer, and Storm Drain projects proposed for the next fiscal year.

City Engineer McNeely, Assistant City Engineer Greg Armendariz, Redevelopment Projects Manager Mark Rogge, Associate Civil Engineer Doug DeVries, Assistant City Manager Blair King, and Director of Information Services Bill Marion responded to questions from the Council.

Councilmember Livengood inquired about the Alviso Adobe renovation site improvements commenting that it shows \$2 million total cost and \$2 million in the prior year and asked if the money was sitting somewhere and for confirmation that the City hasn't spent \$2 million on the project. Mr. McNeely explained that some money has been spent on roof repairs and staff has been working with Calvary Church on access and the possible purchase of right-of-way for a parking lot and access; the Church has agreed in concept to place a parking lot behind its property with possible access off Uridias Ranch Road.

Vice Mayor Dixon questioned the \$200,000 shown as Library JPA financing on page 31 for the Library Offsite Utility Improvements. Assistant City Engineer Armendariz responded that was an error; the JPA Library contribution was a grant only applicable for studies like the pre-design; and the \$200,000 was not appropriate here.

Vice Mayor Dixon commented on the alignment study for the pedestrian/bicycle over-crossing (page 115) reporting that it had gone through the Bicycle Advisory Commission and had been a long term effort. Vice Mayor Dixon said she wanted to let the public know that possibly through an agreement, an easement area between Solectron and Lifescan would take pedestrians/bicyclists right to the Great Mall and inquired if it had been accepted as a Tier One project by the VTA. Mr. Armendariz responded yes, which would fund about 80 percent of the total construction.

Following questions concerning Abel Street Midtown improvements, Mayor Esteves inquired how many homes were expected for the KB Project. Assistant City Manager King responded the current number was 720 on site plus the senior housing project.

Councilmember Gomez, referring to page 47, inquired if any of the trails were usable right now or if there were any barriers that prohibit the public from using those trails. Mr. McNeely responded initially, until a trail is finished and an agreement executed with the Water District, it really isn't a trail and was not set up for public use; occasionally, the Water District in control of its right-of-way does allow people to walk down a levy, but it was not an official trail.

Referring to the sewer improvement projects on page 165, Councilmember Livengood inquired if the future project for new sewer treatment capacity detailed on page 186 (and talks about buying somebody's excess capacity but mentions this could mean a temporary solution) being put off to the year 2008/09 meant we'll be okay until then? Mr. McNeely responded yes. Councilmember Livengood continued by saying and then at that point, the plant would not have more capacity, because it's not scheduled to have more, but what you're saying is the potential exists that either Santa Clara or San Jose in particular would have capacity they could sell us. Mr. McNeely responded staff was doing the sensitivity analysis and watching the development closely to see how Midtown develops; a proposal may be made to purchase some capacity if it comes on the market.

Councilmember Gomez commented on the Penitencia Creek Trail feasibility study noting that Penitencia Creek goes all the way to Berryessa Creek and inquired why the study stopped at the W. Calaveras Blvd to the southern limits of the City. Mr. McNeely responded that was pretty much the limits identified in the Master Plan; staff would look at the possibilities but because of its size there on, it would have to be down in the middle of the creek to implement a trail there and it would be hard to get the Water District to approve it.

Councilmember Polanski commented that the Art in Your Park Coordination project on page 60 looked at setting aside \$20,000 a year to help implement the vision of the Arts Commission and the Art in Your Park project with the newest art recently installed at Hillcrest Park. Councilmember Polanski said when the Subcommittee reviewed the CIP, she was pleased that the city was now looking at projects that staff believes can be accomplished over a period of time, she thought this was good, and the process was working very well.

MOTION to tentatively approve the Draft Capital Improvement Program for 2004-2009.

M/S: Polanski, Gomez.

Ayes: 5

**RA6.
ADJOURNMENT**

There being no further Redevelopment Agency business, Mayor Esteves adjourned the Redevelopment Agency meeting at 8:57 p.m.

The City Council meeting continued.

UNFINISHED BUSINESS

**6.
Odor Action Plan Update**

Principal Civil Engineer Darryl Wong introduced representatives of BFI, Dwight Herring and Bill Jones, and Ron Gardner, Manager of the Water Pollution Control Plant, who were present in the audience and commented that both of these organization had been very helpful and responsive to requests from the City whenever their help was needed. Mr. Wong presented the monthly update of the odor control coordination activities reporting that the consultant agreement with Cal Recovery had been executed; the consultant visited the Newby Island landfill and compost facility to evaluate and observe odor control best management practices; staff was continuing with outreach activities; the Public Works Department had joined in the Rapid Notification Process; and the number of complaints logged in for February was 11, March was 23, and 8 as of April 6. Mr. Wong noted that Marilyn Nickel was passing out a map showing odor complaint locations for April 2004 (through April 16).

MOTION to note receipt and file.

M/S: Gomez, Livengood.

Ayes: 5

**7.
City Newsletter**

City Manager Wilson reported the presentation on this item would be made by Cindy Maxwell and passed out an additional addendum to the report that responded to the question Councilmember Gomez raised as to potential other publications that might be included or assisted by inclusion in the newsletter.

Principal Analyst Cindy Maxwell reported staff was returning with more detailed information regarding the cost and outside contract assistance for writing the text of the newsletter based on four annual issues, up to 12 pages in length, distribution through the U.S. Post Office to all single and multi-family residents through the City, and copies made available at the Chamber and at public facilities and also included in new resident packages. Ms. Maxwell further reported the newsletter would be printed in-house with a four-color cover and two-color inside; a template would be professionally designed and thereafter used by staff; and the projected cost of the first issue was under \$12,000, \$9,500 for additional issues, and a total cost for four issues of almost \$39,000. Ms. Maxwell noted that the contract with the writer was also included. Ms. Maxwell commented that the public information the City distributes was quite varied and a lot could be incorporated into the newsletter in various forms; the handout included documents that come out on a regular basis and might be included as an insert.

Councilmember Gomez commented that there was no way of knowing what could potentially be saved. City Manager Wilson responded if you included the item, you would be saving the mailing and sorting costs (approximately \$3,000 on a mailing to all residents) but there would still be the production costs; some you could actually include in the newsletter and save additional printing costs.

Councilmember Gomez questioned why the cost went from \$20,000 in February to \$40,000. Mr. Wilson responded the \$20,000 cost was based on a four-page newsletter, which was the bulk of the change; in February, the smallest unit of cost (for a four-page newsletter) was given instead of the maximum unit of cost (for a 12-page newsletter).

Councilmember Livengood said he thought this was something to pursue, a newsletter was a sound idea but it was his understanding there were some laws right now regarding newsletters; he recalled there was some controversy with the City's first newsletter back in the seventies about Council having pictures in it, and asked the City Attorney exactly what were the dos and don'ts with that. City Attorney Mattas responded there were specific FPPC regulations that dictate exactly how information can be conveyed that relates to Councilmembers; for example, pictures are not allowed; if the Council's names are listed, they must be all in the same font size; and he would be happy to provide a memo to the Council with the regulations.

Councilmember Livengood said he thought this was a good idea and was happy it was back and hopefully moving forward.

Councilmember Polanski said she thought this was an excellent way to get information out to the public because there was also a lot of misinformation about what was going on in the City; she thought the street sweeping schedule might be an excellent thing to put in a newsletter; and if other optional mailings, especially the one on residential recycling, could be incorporated, it would cut down on the cost.

Vice Mayor Dixon said she specifically stated when she proposed this that it was not going to be political; she has had the opportunity to go to various cities and was astounded to see cities' smaller than Milpitas have newsletters; and it was just a matter of getting the communication going. Vice Mayor Dixon said she would like to see the street sweeping schedule in every issue; dates could be coordinated with the School District and with the Chamber; during the

course of the year we don't know what's going to happen so the size may vary from four to 12 pages; it also will help the Chamber (since there no longer is the "Welcome Wagon" for new residents); and thanked staff for putting this together fairly quick.

Mayor Esteves said he thought it would definitely have value, especially a calendar of events in the City collecting from community organizations anything they may have.

Councilmember Gomez thanked staff for getting him the data as it helped him look at this a little differently.

MOTION to approve the production of a Milpitas City Newsletter for one year (4 issues) at a cost of up to \$38,849 with the costs to be shared half by the Redevelopment Agency and half by the City; and approve the contract for the professional writing services with Ealasaid Haas.

M/S: Gomez, Polanski.

Ayes: 5

Mayor Esteves inquired when the first issue would go out. City Manager Wilson responded it was planned for July.

NEW BUSINESS

8. Street Sweeping Solid Waste Service

Assistant City Manager Blair King reported that Milpitas contracts with Enviro-Commercial Sweeping to provide street sweeping services for residents and businesses; residential areas are swept twice per month and commercial and industrial areas four times per month; some residential areas with a high number of trees are swept weekly during November and December; and in all, the contractor sweeps 9,596 curb miles, 840 intersections, and 108 parking lots annually. Mr. King further reported that in California, street sweeping has historically been considered a janitorial service, closely aligned with solid waste refuse service and is exempt from public works rules and regulations and may be contracted without competitive bid and through exclusive franchises. Mr. King said the contract with Enviro-Commercial Sweeping expired last June but was extended to allow time for staff to research cost-saving alternatives; and before the Council was a proposal to incorporate street sweeping as a service in the solid waste franchise agreement with BFI at a competitive rate of \$17.87 per curb mile. Mr. King explained that two options were being considered; in Option One, BFI would begin to sweep streets within 30 days and would not charge for street sweeping in 2004, 2005, 2006, and 2007 and in exchange, the City would offer to extend the franchise agreement for ten years, until September 2, 2017; in Option Two, BFI would begin to sweep streets within 30 days notice, there would be no charge until January 2005, a fee of \$0.89 per month for residential customers would be imposed at that time, and the BFI franchise would expire September 2, 2007. Mr. King said either option would save the General Fund approximately \$225,000 annually.

Councilmember Livengood, referring to Option One, inquired what happens in the year 2008. Mr. King responded in 2008, a charge would appear on the garbage bills estimated at \$0.74 per month. Councilmember Livengood commented that we have been looking at rate changes over the next number of years and inquired if staff had looked at how this matched to sewer and water rates in 2008. Mr. King responded staff had not. Councilmember Livengood further commented the City has an agreement with BFI about how and when garbage rates are increased and asked if this would become part of that. Mr. King responded in discussions with Bill Jones of BFI, there would be no charge until 2008 (in Option One). Councilmember Livengood commented that a ten-year extension was a long one and asked when would the City be able to go to BFI and talk about changing conditions or issues. Mr. King said it was his understanding that BFI was open and willing to consider other changes to the franchise agreement right now and that would continue through 2007 and beyond.

Vice Mayor Dixon commented that if there was something of importance right now, we wouldn't have to wait until 2007; she thought the rate per curb mile was much lower than

neighboring cities; it should be noted that no service was being lowered; and inquired if changes in the contract would also include recyclables and expanding the list of recyclables.

Bill Jones, BFI, said it could. Vice Mayor Dixon asked if BFI would also be open to a City-wide clean up one or two times a year. Mr. Jones said they could talk about any number of things and added that there currently were the household disposal days.

Councilmember Polanski asked how street sweeping was currently being charged. Mr. King responded the cost was absorbed in the General Fund and with this proposal, that would be removed as a General Fund expense and incorporated into the functions of BFI. Councilmember Polanski inquired how Mr. Cuciz felt about the proposal. Public Works Supervisor Dennis Cuciz responded he believed it was a win-win situation; the current level of service would be maintained and the expense to the General Fund would be reduced.

Councilmember Gomez commented that in other cities, the street sweeper follows shortly after the garbage pickup and inquired if that was a potential in Milpitas. Mr. Jones responded there was a current schedule they said they would want to keep so there is little disruption. Mr. Cuciz added that right now the streets were swept after garbage pick up and that schedule would be maintained. Councilmember Gomez said he was comfortable with Option One.

Mayor Esteves said he talked to Mr. Jones earlier and mentioned the possibility of one more year through 2008. Mr. Jones said they would be open to looking at what would make it a win-win situation. Mayor Esteves asked for confirmation that it would save \$225,000 annually. Mr. King responded yes.

MOTION to direct that street sweeping be considered a solid waste function and implement street sweeping services via an amendment to the Solid Waste Franchise Agreement in accordance with Option One, no charge with a franchise extension, with the ability to negotiate further.

M/S: Dixon, Polanski.

Ayes: 5

ADJOURNMENT

There being no further Council business, Mayor Esteves adjourned the City Council meeting at 9:38 p.m.

Gail Blalock, CMC
City Clerk

The foregoing minutes were approved by the City Council as submitted on May 4, 2004.

Gail Blalock, City Clerk

Date

APPROVED MINUTES
CITY OF MILPITAS

Minutes:	Regular Meeting of Milpitas City Council (Including Joint Meeting with Redevelopment Agency)
Date of Meeting:	April 6, 2004
Time of Meeting:	6:00 p.m. (Closed Session) 7:00 p.m. (Regular Session)
Place of Meeting:	City Hall Council Chambers, 455 E. Calaveras Blvd.

ROLL CALL

Mayor Esteves called to order the regular meeting of the Milpitas City Council at 6:00 p.m. Present were Mayor Esteves, Vice Mayor Dixon, and Councilmembers Livengood (arrived 6:01 p.m.) and Polanski. Councilmember Gomez arrived at 7:00 p.m.

CLOSED SESSION

Mayor Esteves publicly stated the Council would convene in Closed Session to discuss the following four items listed on the agenda:

- 1. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**
(Pursuant to Government Code Section 54956.9[c])
Initiation of litigation: one case
- 2. CONFERENCE WITH REAL PROPERTY NEGOTIATOR**
(Pursuant to Government Code Section 54956.8)
Property: City of Milpitas property (APN Nos. 2208041 and 2208003)
Negotiating Parties: City of Milpitas and Santa Clara County
Agency Negotiators: Thomas J. Wilson and Blair King
Under Negotiation: Terms and conditions for sale or lease of property
- 3. CONFERENCE WITH REAL PROPERTY NEGOTIATOR**
(Pursuant to Government Code Section 54956.8)
Property: Vacant Property N. Main Street (APN No. 2208003)
Negotiating Parties: City of Milpitas/Milpitas Redevelopment Agency and Kathleen Cardoza
Agency Negotiators: Thomas J. Wilson and Blair King
Under Negotiation: Terms and conditions for acquisition of property
- 4. CONFERENCE WITH REAL PROPERTY NEGOTIATOR**
(Pursuant to Government Code Section 54956.8)
Property: Winsor and Rodriguez properties (adjacent to Main St. off ramp of Calaveras Blvd.) (APN Nos. 2824014, 2824020, 2824026 and 2824025)
Negotiating Parties: City of Milpitas/Milpitas Redevelopment Agency and Winsor, Rodriguez, Garbe's Towing and Economy Towing.
Agency Negotiators: Thomas J. Wilson/Greg Armendariz
Under Negotiation: Terms and conditions for acquisition of property and rental interests

Mayor Esteves adjourned the meeting to Closed Session at 6:01 p.m.

The City Council meeting reconvened at 7:03 p.m. with Mayor Esteves presiding and Vice Mayor Dixon and Councilmembers Gomez, Livengood, and Polanski present.

**CLOSED SESSION
ANNOUNCEMENTS**

There were no Closed Session announcements.

PLEDGE

Members of Boy Scout Troop No. 92 led the Council and audience in the Pledge of Allegiance.

MINUTES

MOTION to approve the City Council minutes of April 6, 2004, including joint meeting with the Redevelopment Agency, as submitted.

M/S: Gomez, Livengood.

Ayes: 5

SCHEDULE

Councilmember Livengood requested the Bay Area Water Supply and Conservation Agency Board of Directors meetings, which he attends, be included on the schedule for the third Thursday each month at 7:00 p.m. Councilmember Gomez added the meeting of the Martin Luther King/Cesar Chavez Subcommittee on April 22 at 6:00 p.m.

MOTION to approve the Schedule of Meetings as amended.

M/S: Gomez, Polanski.

Ayes: 5

PRESENTATIONS

Mayor Esteves read a Commendation recognizing Milpitas resident Steven Ybarra, a member of the United States Army, for 11 months spent in Iraq helping defend citizens and protecting against terrorism while assisting in the effort for the re-establishment of the Iraqi Government. Mayor Esteves extended the gratitude of the Council and presented the Commendation to Steven Ybarra.

Steven Ybarra thanked fellow Milpitan, his family and friends for their support, which really helped him, and thanked everyone for their patriotism. Mayor Esteves said again, we salute you and we salute your family and recognized Steven's Mom, who was present in the audience.

Mayor Esteves read a proclamation recognizing June as "Scleroderma Awareness Month" and presented it to Marina Duque. Marina Duque thanked the City of Milpitas for recognizing Scleroderma Awareness Month.

Mayor Esteves read a proclamation recognizing April 17, 2004, as "Arbor Day" in the City of Milpitas and inviting everyone to celebrate Arbor Day at the Earth Day event at Yellowstone Park and presented the proclamation to Acting Planning Director Tambri Heyden. Ms. Heyden accepted the proclamation on behalf of the Community Advisory Commission commenting this was a product on the CAC's Work Plan and they were looking forward to the event.

Mayor Esteves read a proclamation recognizing the month of April as "Young Child & Child Abuse Prevention Month" and presented it to Chrissy Rodriguez-Vigil, Preschool Program Coordinator, and Toby Librande, Child Care Coordinator.

Ms. Rodriguez-Vigil described the Children's Memorial Flag, which was brought into the Council Chambers by Van La and Aditya Ullal, members of the Youth Advisory Commission. Ms. Rodriguez-Vigil introduced 13-year-old Leslie Sherman from the South Bay Kids/South Bay School of Music, who sang two solos, "The Greatest Love of All" and "Amazing Grace."

Ms. Rodriguez-Vigil commented that tip sheets on child abuse awareness had been distributed to everyone, more would be available at the Community Center and City Hall, and information was also available on the City's web site.

Mayor Esteves thanked everyone for their participation and also expressed appreciation to all the childcare providers.

CITIZENS FORUM

Mayor Esteves invited members of the audience to address the Council on any subject not on the agenda, requesting that remarks, including any visual or technology-assisted presentations of any kind, be limited to two minutes or less, and noted that the City Clerk would be using the timer and when the red light at the podium came on, two minutes would be up.

Marilyn Hay announced the Friends of the Library Book Sale on Friday, April 23, 7-9 pm (members only), Saturday, April 24, 10-5 pm, and Sunday, April 25, 11-3 pm and encouraged everyone to come.

Debbie Giordano announced that April 9th would be the 60th anniversary of the Bataan Death March and felt that it should be recognized and honored in Milpitas in a special way.

Rob Means read from an article in the newspaper about State roads being the worst in the Nation and expressed concern that as the streets in Milpitas age there be adequate funding to maintain the streets.

Craig Ranker invited everyone to attend the three remaining workshops (April 7 & 22 and May 5 at City Hall) to help create guidelines for an ethics policy.

Frank De Smidt announced the Chamber's next "Good Morning Milpitas" on Friday, April 16, 7:30 am at the Embassy Suites Hotel with Carl Guardino as the speaker and the State of the City Address at City Hall on Wednesday, April 21, at 6:00 pm.

Mr. Swanson commented on the proposed changes to the Town Center and expressed his fear that the huge store will uproot the very heart of this town.

ANNOUNCEMENTS

Councilmember Polanski thanked everyone involved with the opening day ceremonies for Milpitas Little League North; reported the 50th Anniversary Committee met and was looking at participating in various events throughout the year such as Earth Day, Global Village, July 4th activities, and was working on a time capsule to include artifacts and memorabilia from this year that would be buried January 26, 2005 and anyone with ideas or things that should be included should contact Cindy Maxwell at City Hall.

Vice Mayor Dixon reported that on March 17, she and the Mayor represented the City and the VTA at the official opening of the Dixon/I-880 improvements, which came in under budget and on time; on March 18, the School District/City Communications Committee discussed a proposed to have the Resource Officer currently at Russell and Rancho Schools spend some quality time during the day at Cal Hills, discussed a proposal for a reading program for pre-kindergarten children, and discussed a proposal for a college satellite placement at Milpitas High School through an agreement with San Jose State and San Jose City College; and on March 18 she attended the CEPAC meeting and extended congratulations to the City's Volunteer Coordinator Rosana Cacao for her hard work on the County Divergent Volunteer Program, which is a list of volunteers that will be combined with what the County is doing and one of the first of its kind. Vice Mayor Dixon further reported the successful first time ever MUSD/Foundation for Education sponsored Crab Dinner and Auction, the money was still coming in and would be used for classroom supplies, thanked Councilmember Polanski and Mayor Esteves for not only buying a ticket but serving as guest servers to the sold-out event. Vice Mayor Dixon further reported on March 20 Curtner School held its Annual International Faire and Library Commissioner Sonny Wang's daughter, who is in the second grade, performed a Chinese Opera; also on March 20, Vice Mayor Dixon said she had the honor of representing the City as Co-Host of this year's recognition of Citizen of the Year Marilyn Hay, Police Officer of the Year Henry DeKruyff, and Firefighter of the Year Steven King and extended thanks to Dem Nitafan and the Knights of Columbus for sponsoring the event; on March 25 the Santa Clara County Joint Powers Authority met to address the recent failure of Measure B to extend the current library assessment and direction was given to staff to look at possibly closing one day a week at all nine County libraries, and a few days later she met with the County Librarian and the people who put together the campaign; on April 1, the County Emergency Preparedness Council accepted the resignation of the County Emergency Director and it was announced that Milpitas Fire Chief Bill Weisgerber had been selected to serve on the County Oversight Committee for Homeland Security Task Force; on April 2 Councilmember Gomez, Mayor Esteves, and Vice Mayor Dixon unveiled the third "Art in the Park" piece at Hillcrest Park and thanked former Councilmember Jim Lawson and Elena Lawson for spearheading the project; the next art will be for Starlite Park; on April 3 Mayor Esteves and Vice Mayor Dixon attended the dedication of the Mike Harwood Training Room at Fire Station 1; and reminded everyone that on April 19, 6-8 p.m. at Weller Elementary

School, the VTA will be hosting a meeting for public input on the BART extension to Milpitas, San Jose, and Santa Clara.

Mayor Esteves congratulated the Milpitas Chamber of Commerce for its Small Business Fair at the Great Mall; reported that he attended the Talent Show sponsored by the Youth Advisory Commission; congratulated Cal Hills on its selection by the California Department of Education as a Model Continuation High School for 2004, commenting that he was proud because he was one of the mentors at the school; and congratulated City staff, reading from a letter from the Department of Housing and Urban Development stating that the Annual Community Assessment for implementing the Annual Action Plan Objectives based on the City's five-Year Consolidated Plan, Goals, and Priority Needs has the continuing capacity to implement and administer the CDBG Program. Mayor Esteves said he attended the Rainbow Theater's performance of "Chicago", several of the lead roles were performed by members of the Youth Advisory Commission, and urged everyone to attend one of the remaining performances on April 8 and 9 at 7:30 p.m. and April 10 at 3:00 p.m.

AGENDA

City Manager Thomas Wilson reported that staff was requesting item 1, the public hearing on amendments to the Sign Ordinance regarding freestanding signs in the Town Center, be continued to May 4, 2004, due to an appeal just filed of the Planning Commission action regarding the Town Center. Mr. Wilson also called to the Council's attention three erroneous paragraphs on page 17 following the recommendation for item 22 that should be deleted.

MOTION to approve the agenda as amended.

M/S: Polanski, Livengood.

Ayes: 5

CONSENT CALENDAR

Mayor Esteves inquired if anyone wished to make any changes to the Consent Calendar. There were no requests.

MOTION to approve the Consent Calendar, items with asterisks on the agenda, as submitted, in accordance with the staff recommendations.

M/S: Livengood, Polanski.

Ayes: 5

***4. RSRAC Appointment**

Approved the Mayor's appointment of Ed Blake, Jr., to the Recycling and Source Reduction Advisory Commission for a term expiring October 2005.

***6. Federal Transportation Reauthorization**

Adopted Resolution No. 7392 in Support for Federal Transportation Reauthorization.

***8. Library Advisory Commission Work Plan**

Approved the 2004 Library Advisory Commission Work Plan.

***10. Water Supply Assessment**

Approved Water Supply Assessment for Elmwood Residential and Commercial Project.

***11. 2005 City Calendar**

Noted, receipt and filed.

***14. Playground Equipment Upgrade (Project No. 5077)**

Adopted Resolution No. 7393, granting initial acceptance subject to a one-year warranty period and reduction of the faithful performance bond to \$56,067.28.

***15. Cathodic Protection Systems**

Adopted Resolution No. 7394, granting initial acceptance subject to a one-year warranty period and reduction of the faithful performance bond to \$113,833.94.

**Repairs
(Project No. 7050)**

- *16.
N. Milpitas Blvd.
Median Landscape Renovations
(Project No. 4140)** Adopted Resolution No. 7395, granting final acceptance and release of the bond.
- *17.
Munifinancial** Authorized the City Manager to engage the services of MuniFinancial to assist in the development of maintenance finance strategies and cost sharing spreads for the North Main Street/Library parking structure, for an amount not-to-exceed \$70,000.
- *18.
San Jose Water Co.
Agreement** Approved the amendment to the agreement with San Jose Water Co., subject to approval as to form by the City Attorney.
- *19.
Treadwell & Rollo
(Project No. 3394)** Authorized the City Manager to enter into the agreement with Treadwell & Rollo in the amount of \$120,000, subject to approval as to form by the City Attorney.
- *20.
Lowney Associates
(Project No. 4186)** Authorized the City Manager to enter into the agreement with Lowney Associates in the amount of \$25,000, subject to approval as to form by the City Attorney.
- *21.
Lowney Associates
(Project no. 6079)** Authorized the City Manager to enter into the agreement with Lowney Associates in the amount of \$115,000, subject to approval as to form by the City Attorney.
- *22.
Calaveras/Abel Street
Right Turn
(Project Nos. 8154 & 4186)** Authorized the City Manager to execute an agreement with Overland Pacific & Cutler, Inc. in the amount of \$243,000, subject to approval as to form by the City Attorney; Approved the budget appropriation of \$185,000 for the Midtown Parking Structure, Project No. 8154.
- *23.
Milpitas Activity Guide** Awarded the bid for the first three issues of the 2004/05 Milpitas Activity Guide to Milpitas Post Newspapers, Inc. as the lowest bidder in the amount of \$16,414.38, and authorized the City Manager to execute a contract subject to approval as to form by the City Attorney; and authorized the City manager to exercise the options for the remaining three single year options if it is in the best interest of the City at that time to do so.
- *24.
Traffic Signal Head Painting
(Project Nos. 4109 & 4167)** Authorized the City Manager to execute a contract with Diaz Corporation as the only qualified contractor for painting traffic signal heads in an amount not-to-exceed \$103,550.00, subject to approval as to form by the City Attorney.
- *25.
Audible Pedestrian Signals
(Project No. 4173)** Awarded the bid for the purchase of the audible pedestrian signals and ADA push buttons to the lowest bidder, Fortel Traffic, Inc. in the amount of \$16,140.08.
- *26.
Miscellaneous Vendors/
Contractors** Approved the following purchase requests:
1. \$50,000.00 to Balch Petroleum to test, modify and repair seven underground fuel tanks to stay in compliance with State mandated SB989, secondary containment testing. Balch Petroleum is a sole source provider of this service in the area. This is a not-to-exceed amount as modifications and repair costs will not be known until after testing of each underground tank is complete. (Funds are available from the Public Works Department operating budget for this service.)

2. \$7,020.01 to San Jose Blue for color printing and binding of 20 sets of large page utility plats for the Engineering Division. (Funds are available from various Water, Sewer and Recycled Water CIP projects for this purchase.)
3. \$18,398.00 to Peninsula Pump for emergency repairs to the pump column and bowl assembly at the Abbott Pump Station and emergency pump bearing repair at the Oakcreek Pump Station. (Funds are available from the Public Works Department operating budget for this emergency repair service.)
4. \$11,200.00 to Robert A Bothman, Inc. for emergency concrete repairs due to water line breaks at 25 locations. (Funds are available from the Public Works Department operating budget for these emergency repair services.)
5. \$6,327.84 to Preston Pipeline for emergency repairs to a 12", high pressure, water main on Calaveras Blvd. at Calaveras Ct. (Funds are available from the Public Works Department operating budget for this emergency repair service.)
6. \$6,141.00 to Intelligent Technologies and Service to provide annual inspections and preventive maintenance of fire sprinkler systems for the Police/Public Works building, Community Center and the Sports Center. (Funds are available from the Public Works Department operating budget for this service.)
7. \$11,025.00 to MWH Laboratories for quarterly State mandated water quality testing and analysis for HAAS and THM in the City's drinking water supply for the Utility Maintenance Division. (Funds are available from the Public Works Department operating budget for this required service.)
8. \$5,148.00 to CJ's Police K9s for the purchase of a new police dog to fill one vacancy in the K-9 unit for the Police Department. (Funds are available from the Police Department operating budget for this purchase.)
9. \$6,386.75 to US Metering and Technology for the purchase of 120 residential water meters to replenish depleted inventory supplies for the Utility Maintenance Division. (Funds are available from the Public Works Department operating budget for this purchase.)
10. \$12,502.04 to Edward S. Walsh Co. for the purchase of 15 fire hydrants and miscellaneous hydrant repair parts to replenish depleted inventory supplies for the Utility Maintenance Division. (Funds are available from the Public Works Department capital outlay and operating budget for this purchase.)

PUBLIC HEARINGS

1. Ordinance No. 124.26 Sign Ordinance Continue to May 4, 2004

City Manager Wilson reported that staff was proposing that this item be continued in order to allow for review of the Commission action with regard to the Town Center Development. Acting Planning Manager James Lindsay said that staff did receive an appeal and staff recommended this Sign Ordinance amendment run concurrent with the appeal; the appeal was expected to be brought forward on May 4, 2004; and staff recommended the public hearing be opened and continued to May 4, 2004.

Mayor Esteves opened the public hearing and asked if anyone wished to comment. There were no requests.

MOTION to continue the public hearing to May 4, 2004.

M/S: Gomez, Livengood.

Ayes: 5

2. Acting Planning Manager Lindsay reported the Zoning Ordinance amendments before the

Ordinance No. 38.763
Zoning Ordinance
(Single-Family Definition)

Council were proposed to address some community concerns stemming from overcrowding within residential neighborhoods and would assist in assuring that homes are occupied in the manner that retains the character of the single-family neighborhoods. Mr. Lindsay displayed a matrix detailing the changes stating that under the proposed changes, occupants of single-family homes would need to share household responsibilities, jointly use common areas, and be able to access all rooms within the home unless the home contained a second family unit or borders; staff was recommending that an additional parking space be required on site for each room rented if that rent includes the cost of meals (defining under the ordinance a boarding house); staff was also requesting that the definition of a residential kitchen be enhanced to provide a clear definition that was more enforceable. Mr. Lindsay described a series of five situations where single-family dwellings could be either rented in full or in part (renting of rooms where you have independent living units, separate entrances, no access to common areas in certain areas and duplicate kitchens, situations of renting rooms with no separate entrance and access to common areas and kitchen areas, boarding houses, second family units, and garage conversions). Mr. Lindsay said staff was recommending the redefinition of how a household operates to be more consistent with State and Federal laws and an explanation of how a family would share a common area, internal access to rooms, and the sharing of responsibilities, and for a boarding house (a situation where a room is rented with meals) a parking requirement be added for each room that is rented. Mr. Lindsay further stated that the ordinance amendments would prohibit, what was currently happening in the community, the renting of rooms where people live independently of each other; the whole idea of the family unit was to live together and to operate as one unit that that was what the ordinance amendments attempted to do – to encourage more of a traditional family use. Mr. Lindsay talked about garage conversions stating that both the Community Advisory Commission (CAC) and the Planning Commission held public meetings on all of the proposed amendments and individually considered how to regulate garage conversions; the CAC recommended that garages not be allowed to be converted into living space and the Planning Commission took that consideration, took public testimony, and recommended that the regulations stay as is, which currently allows garage conversions, and the draft ordinance before the Council reflected the Planning Commission recommendation. Mr. Lindsay also reported that staff was proposing modifications to how legal notices are posted on project sites; a Negative Declaration was prepared for the Zoning Ordinance amendments; staff received no comments during the public review period and, therefore, was recommending the Council close the public hearing, adopt the Negative Declaration, waive reading beyond the title, and introduce Ordinance No. 38.763.

Vice Mayor Dixon said she noticed that the March 24 Planning Commission minutes were not included and since the vote was split (4 to 3), it would be helpful to know where the Planning Commission was coming from because it was her understanding that the Community Advisory Commission was unanimous in its decision.

Mr. Lindsay responded the minutes from the Planning Commission were unavailable for the packets but the February 25 Planning Commission minutes were provided and showed the conclusion that was reached; the CAC minutes were provided in the packets.

Vice Mayor Dixon inquired if other residents spoke during the Planning Commission meeting. Mr. Lindsay responded a number of residents spoke and the majority of them were in favor of garage conversions.

Vice Mayor Dixon commented that when she served on the Planning Commission, this issue came up and it was very difficult to tell the public that we really have our hands tied because we have to abide by a higher law which said we have no ability to determine what a family unit is; it was back again and she understood why, because there appears to be a lot of garage conversions that are not even real conversions; and she especially understood in neighborhoods where there was a parking problem. Vice Mayor Dixon called attention to the part that talked about the provision possibly being unconstitutional but there was also a statement that said reasonable accommodations and rules and asked if how far the City can go under the guise as reasonable accommodation had been looked at. Mr. Lindsay responded in

drafting the amendments, staff worked very closely with the City Attorney's office; with the Attorney's guidance, staff was able to come up with a product that meets the constitutionality test yet gives maximum authority granted so the provisions can be enforced. Vice Mayor Dixon asked for confirmation that this was only complaint driven and there wasn't a dedicated staff member going around town looking for conversions. Mr. Lindsay responded yes, there was no dedicated staff member for that; however, in traveling the community, both building inspection staff and code enforcement staff upon notice of a violation, would record it.

Councilmember Gomez inquired if this passed, under any circumstances would houses that do have separate living spaces or separate entrances be considered legal non-conforming. Mr. Lindsay responded if a house had a room and the only access to that room was from the outside and that was permitted by the City prior to the adoption of the ordinance, it would become legal non-conforming; if something happened to the house, they would have to bring the house into conformance (only in a situation where there is only external access); if there is external and internal access and not a lock condition, that would be conforming under the ordinance as proposed.

City Attorney Steve Mattas commented that if in fact it was not permitted at the time it was done, if it was an illegal addition, it would not attain the status of legal non-conforming status because it would never have held the status of legal status.

Councilmember Polanski commented that staff's recommendation on the garage conversion for the Planning Commission was different than what was being recommended tonight and asked staff to comment on staff's initial recommendation. Mr. Lindsay responded at the March Planning Commission meeting, staff recommended prohibiting full garage conversions so that garages would have to stay as garage space; what staff was doing this evening was really serving as a vehicle to the Planning Commission's recommendation; therefore, the recommendation reflected that decision. Councilmember Polanski asked what was the staff reasoning for no garage conversions. Mr. Lindsay said staff was looking for further ways to increase available parking on a site and decrease the ability to have more opportunities for overcrowding.

Councilmember Polanski said she knew there are a lot of daycare centers in homes where the garage has been converted into a daycare facility and inquired if there were rules and requirements or permitting that goes through the City and the State. Mr. Lindsay responded any daycare situation does need permitting from the State and under the proposed amendment, that could continue if it meets all of the City and Building Code standards and State standards.

Councilmember Polanski expressed concern for safety when it comes to a garage conversion because the garage is normally where the water heater, washer and dryer, and heating elements are located. Mr. Lindsay responded there was a safety issue because a garage, under the Building Code, is meant for storage of autos and the typical appliances Councilmember Polanski mentioned; when a legal garage conversion is presented to the City, it will need a building permit to ensure compliance with all health and safety codes, electrical codes, and building codes; what you find in illegal garage conversions is that typically they are not built to code and do provide a number of safety hazards.

Councilmember Livengood asked if the changes in regard to garage conversions differentiated between a family, for whatever reason, that needs more living space and expands into their garage with permits and somebody who comes in and says they want to convert their garage to rent out a room? Mr. Lindsay responded yes, the ordinance provides the differentiation but it doesn't necessarily apply to the garage; under the situation of a college student returning home and wanting to live with the family, that would operate as a single housekeeping unit; if the room or a living space within the garage were to be rented, it would need to act as a boarding house and the rent would need to include the meals and an additional parking space would need to be provided on site for that boarding situation.

Councilmember Livengood inquired of any of this in any way impact people's ability to have a roommate? Mr. Lindsay responded no, it wouldn't as long as they operate as a single housekeeping unit, share responsibilities, don't have compartmentalization within the kitchen or any of the areas, and they have internal access, which was pretty typical of a roommate situation; the other situation was if an independent living situation was to be created within the room, it would then meet the definition of a second family unit and operate in that fashion.

Councilmember Livengood asked what happens now to the care facilities, particularly the ones designed to be transitional housing for people that have been in either legal trouble or drug rehab or some form of court ordered treatment; were there any changes to the type of regulations that they have to follow or is that all preemptive by the State? Mr. Lindsay responded no, those were defined as group homes and in a transitional type of housing, these regulations do not change the regulation of group homes. Councilmember Livengood asked the reason we don't change the regulation of group homes was because we can't? Councilmember Livengood said he gets complaints from citizens about some of those different institutions and without getting into the issue of whether they are good or bad, they do cause significant impacts on neighborhoods and parking was one of the issues, but it was his understanding that State law preempts the City on those issues and doesn't allow the City to enact any regulations that would impede a group home. City Attorney Mattas responded that was correct, in particular if you are talking about group homes with six or fewer people, which actually are required to be treated as single-family units similar to the ordinance before the Council.

Councilmember Livengood inquired if any of these regulations applied to any other zoning district other than single family. Mr. Lindsay responded staff was suggesting changes to the R2, R3, and R4 zoning districts as it relates to boarding conditions, which is the provision of meals and rent; every zoning ordinance would have similar regulations requiring a conditional use permit when you board more than three people.

Mayor Esteves asked what was the real objective of this, why was it being done, and if it was parking or something else. Mr. Lindsay said this was a first phase or first approach to dealing with the overwhelming community concern of overcrowding within the single-family neighborhoods and the City's ability to enforce that was challenged by Federal and State law; staff was trying to develop a framework in which the City can have more control and more enforceability to control the situation. Mayor Esteves inquired what was meant by overcrowding. Mr. Lindsay said he was talking about situations where the home is used beyond the intent of the single-family district, which was supposed to be one family in one home; the community was experiencing multiple situations of renting of rooms, renting of multiple rooms, and the parking impact that results on the streets, in the driveways, and everything else. Mayor Esteves said parking was one of the negative effects but was it more of a safety issue with more people inside the house or of conforming to zoning regulations of being a single-family residential. Mr. Lindsay said he thought it was yes to retaining the character of the single-family neighborhood, yes to the safety of the occupants in the home, and yes to the parking impact it creates on the streets.

Mayor Esteves asked what was the legal definition of single-family residential. Mr. Lindsay responded the current definition in the ordinance, unfortunately, was not enforceable. Mayor Esteves asked how was it being defined so it becomes enforceable? Mr. Lindsay said it was being defined so it is consistent with State and Federal law and by making it consistent so that it can be enforced. Mayor Esteves asked for a statement of how it should be defined. City Attorney Mattas explained the definition as proposed was a definition that had been tested already in a San Jose ordinance but was not a published opinion, but it had been tested up to the court of appeals and related to the household being the functional equivalent of a traditional family whose members are non-transient, operating as a single unit of people, or a single family unit within the household, so that was why Mr. Lindsay made repeated comments of the fact that everyone have equal access to various parts of the house; obviously, if you are a roommate situation, you may have an understanding amongst roommates that you don't go in each others bedrooms, but as to all of the common areas, they are all equally

accessible so that they don't have separate doors or separate kitchenettes, which would then create them into separately operated functions of the household. Mr. Mattas further explained the State and Federal laws were very clear both in terms of our ability to regulate what one might call a traditional family, parents and kids, and we can't limit the household occupancies to that type of definition, you have to instead look and see how the house operates as a single unit, and we call it a single-family unit, but in fact, it is often composed of members who are not family members.

Mayor Esteves expressed concern for the effectiveness of the proposal, he agreed with the intent, but if it was to be effective, enforceable, and not subject to lawsuits and neighbors fighting one another, it had to be more structured. Mayor Esteves asked what happens with families who use the garage not for parking but for storage, or a play area, or for whatever purpose but not for parking – would that be illegal. Mr. Lindsay responded staff was not recommending any changes to how a garage is used. Mayor Esteves commented that we cannot even require two parking spaces for each house or really ensure that it would be used for parking. Mr. Lindsay said two parking spaces can be provided on the driveway; each single-family home, when it is built, is typically provided a two-car garage and a driveway apron and due to the front setback requirements, you end up with the ability to park two cars on the driveway without using your garage. Mayor Esteves commented that it is not an effective control in the first place. Mayor Esteves said he wanted to go back to the issue of a boarder, of someone renting out rooms but saying they are roommates, and asked how staff would distinguish between boarders and roommates when the owner says they are not renting but are roommates (how would that conflict be settled)? Mr. Lindsay described a hypothetical situation of a code enforcement official from the City visiting the location under today's ordinance and how it would apply under the proposed ordinance; under the existing ordinance, there would be no provisions for enforcement because the current code cannot be enforced; under the proposed regulations, the code enforcement official could then see and question the person who is renting, inquire about the kinds of activities, how they relate, and make a conclusion of whether or not the renters are living in the unit as a single housekeeping unit or if the rent covers the meals, and what was their relationship; if the relationship, through documentation and interviews, was determined to be independent, then that would be a violation of the Municipal Code as it was being proposed; if they are operating as a single housekeeping unit and sharing in all of the costs, then that would be in conformance with the regulations.

Mayor Esteves commented that if you are a smart landlord, you can arrange as if you are living together and asked how that would be controlled. City Attorney Mattas responded he thought you have to come to it from the perspective that you have very limited authority under State and Federal law, the present ordinance was not enforceable and was unconstitutional, and so the steps that were being proposed provide some additional leeway; somebody who wants to avoid any regulatory authority on this issue other than simple occupancy limitations can structure their rental to accomplish that by just simply not calling them boarders; if, however, you have people who want to have independent living circumstances, then you can regulate them and they will very quickly become boarder situations.

Mayor Esteves said his real question was about the kitchen and asked for confirmation that only one kitchen is allowed in a single-family residential home. Mr. Lindsay responded yes, currently the definition of a dwelling unit within the Zoning Code was one kitchen; the modifications proposed would expand that to make sure it was clear throughout the ordinance that was the intent. Mayor Esteves said that right now two kitchens would not be approved so the proposal was really not needed because we already have this right now. Mr. Lindsay said we have it but, unfortunately, within the Zoning Ordinance there are multiple definitions for all the different scenarios of living situations. Mayor Esteves said he was talking about kitchens only. Mr. Lindsay said what was proposed was to introduce that requirement into each of the definitions so people, or a lay person reading the ordinance, would only have to go to one location.

Mayor Esteves said the second issue was an external entrance, which wasn't allowed to a single-family residence that is entirely separate with a divider and asked if you see a plan where you see three compartments with separate entrances, it would not be approved? Mr. Lindsay responded no. Mayor Esteves commented that we already have it covered, too. Mr. Lindsay said it would not be approved because it would not be operating as a single-family home right now; what staff was looking for was ordinance authority to be able to say if you are going to do this, you will have to do this under these conditions, and so what we are doing is providing the framework by which to review the request for the closed off situation.

Mayor Esteves expressed concern for fixing something that was not broken; if there were violations that were approved officially, maybe it has to be made clearer and more explicit, but his question was from all the houses that have been approved (single-family homes), were there houses with compartmentalized entrances and more than one kitchen that have been approved because the ordinance was not clear. Mr. Lindsay responded the situation does exist within the community where people are living in rooms that have external access. Mayor Esteves asked for clarification that the City has approved house plans that are compartmentalized or have more than one kitchen, he was not talking about living arrangements, and was trying to look to see if we need to strengthen the ordinance. Mr. Lindsay said we do need to strengthen the ordinance because it doesn't have these explicit standards, and it needs to be strengthened to be more enforceable. Mayor Esteves said he understood but if we have approved a lot already, a loophole because we don't have a very strong ordinance, and that was why he was questioning if a lot of this went through the cracks. Mr. Lindsay said staff had done everything they could to prevent them from falling through the cracks by the implication of what they were trying to do but if challenged, staff preferred to have it very explicit and clear within the ordinance. Mayor Esteves said he was not sure how to solve the parking issue with all of these solutions; it was confusing because a family could have 10 cars.

Vice Mayor Dixon commented that if someone wants to come up with a creative way to have a kitchen, they are going to do it; over the years there have been complaints, especially with bigger homes where families were living independent of each other and were actually cooking in their rooms, so it does happen. Vice Mayor Dixon said her concern went back to the parking, reflected on her own neighborhood (Parktown) where the streets were built narrower as a trade-off for more parks, now garages were being used for other things, there was no way of telling how many people live in a house, and she had received complaints from Parktown residents where one person said he counted 10 to 14 cars and there was no place on his street to have anybody come by.

Councilmember Livengood said he was not feeling as good about this anymore; after hearing the Mayor's questions and the responses, he was less comfortable now; what concerned him a little was that the question got down to how does the staff find out about all this and the answer was we go into the house or we phone them or contact them somehow and ask them very specific questions. Councilmember Livengood further stated that made him a little queasy about getting into people's lives and the way they live; he understood that staff was trying to strengthen the ordinance so that the City has a little more of an ability to go in and deal with aggravated situations but feared that people would read that this new ordinance is adopted and they are going to start calling code enforcement to report on living situations which would trigger a meeting and a lot of sensitive questions about the way people live. Councilmember Livengood said he was getting a little more nervous about this, he understood what staff was trying to do and thought it was worthy and something that should be looked at, but he was really nervous now about what this ordinance could produce and what people's expectations might be of what can and cannot be done.

Mr. Lindsay commented that a lot of the regulations, and he thought the Mayor hit on this, relate to the physical environment; when a code official goes and visits an area, if they immediately look at the kitchen and see there are locks on the cabinets with names on them, they can immediately draw a conclusion of compartmentalization, or they can see that when there is one living room, there's one kitchen and nobody else seems to have a kitchen or living

room, he thought there was a way that a City official could draw some conclusions without being too evasive.

Councilmember Livengood asked what do you do when somebody says thanks for asking, but you are not coming in my house and refuses access. City Attorney Mattas responded the City would be required to follow a procedure under California law for an inspection warrant; if a request to view or go inside the house was denied, we would have to go to court to get an inspection warrant granted, it would have to be based on reasonable cause, and it was a common procedure in code enforcement action throughout all cities in California. Councilmember Livengood inquired if Milpitas has done that on a regular basis. City Attorney Mattas responded Milpitas has not done that in particular, at least within his tenure with the City; however, other cities he works with do it on a fairly regular basis.

Mayor Esteves inquired about the liability of the City. Mr. Mattas responded if you have inspection warrants issued, your exposure to liability is quite small at most presuming the enforcement is done in a non-discriminatory manner and you are always acting under reasonable cause.

Councilmember Polanski inquired if there was any liability now if there is an illegal conversion of a garage or unit, an illegal kitchen, and something happens – there's a fire and it spreads to the neighbors – does the City have any liability. Mr. Mattas responded if it is an illegal activity, we would not be liable for it.

Councilmember Polanski said the CAC had a lot of discussion on garage conversions, on conversions in San Jose where they meet no codes and there had been serious accidents and death, and the CAC did not want something like that to happen here. Councilmember Polanski further stated the CAC recommendation was unanimous not to allow garage conversions; if there were no garage conversions, it would free up parking spaces on the street; and asked if, under the current ordinance, a resident calls to report a dwelling unit next door with separate entrances and people coming and going from the separate entrances all hours of the day and night, what ability does the City have now? Mr. Lindsay responded there was the ability to enforce and staff would continue to do so with illegal construction; however, staff also receives calls of potential overcrowding or renting of multiple rooms but has no ability to respond or enforce; and with the proposed changes, there would be tools to respond to those complaints.

Mayor Esteves said he thought the real objective of this issue was parking and thought the wrong solution was being provided to a different problem; parking was the issue and it was not being addressed; he didn't think neighbors were bothered if four people are living in the house or two families as long as they don't bother them except for the parking. Mayor Esteves further stated this was his own assessment and asked if we are solving the right problem or are we just going around the bush? Mr. Lindsay said he really saw this as a first phase addressing this problem, which was overcrowding and the resulting parking issues; the CAC is continuing to work on the parking issue through its subcommittee; so through this work with the CAC, there may be additional recommendations that come before the Council on ways to address the parking situation within the single-family neighborhood.

Mayor Esteves said he believed the issue was more the parking because it was more external and wanted to go back and look at the real problems and have a real solution because solving the wrong problem would put the City into more problems. City Attorney Mattas commented that there was a practical issue here in terms of overcrowding and parking; there was a real issue with the ordinance right now because it is unconstitutional. Mr. Mattas said what this ordinance (before the Council) does was really just that first step; if there were certain elements that the Council was uncomfortable with, they could back off but a definition was needed that was a defensible definition that goes also to Mr. Lindsay's point that people want to be able to look at the ordinance and understand what is acceptable; and if they look at the City's ordinance right now, and in fact if they are not a lawyer or not trained in understanding

what the restrictions are, they may think that it actually means something else, which can cause confusion in addition to the overcrowding and parking issue.

Mayor Esteves opened the public hearing and invited comments.

Bill Ferguson, Milpitas, said if there was one part that is unconstitutional, it was easy to change that one part and not do all of these. Mr. Ferguson thanked the Mayor for bringing out the real issues and asking the hard questions. Mr. Ferguson commented on the hypothetical situation Mr. Lindsay used regarding roommates and the kinds of questions that might be asked and stated he was opposed to this; the bigger problem was housing and the cost of housing, which was the biggest reason to leave the area; he thought the Council should support people coming up with creative ways to solve the housing problem in their own way; one of the ways was sharing the house, renting rooms, having roommates; and he was opposed to the ordinance because he thought it made it harder to do all that. Mr. Ferguson said he thought it also tried to get into all of these definitions of what a family is, that was just way too much control, he knew there were trade-offs in lowering the cost of housing and then trying to keep the so called single-family housing and trying to keep that, and he was in favor of a lower cost housing but not all of this.

Elsa Rodriguez, Milpitas, said she thought the time was wrong, there were no jobs in the Bay Area, there were several people in her neighborhood who had lost their jobs and were living with their neighbors, she didn't want to pay tax money on something like this, and at this moment the City of Milpitas doesn't have the money.

Rob Means, Milpitas said he had a lot of questions but not enough time to ask them, overcrowding was a regional or national trend, asked if residents complain about overcrowding or too many cars, he felt it was a national trend because of the economic situation and the housing bubble we're having. Mr. Means further stated he thought people were really complaining about too many cars; thought it was about the parking; the parking, the cars, and transportation should be addressed; and there wasn't enough housing in this Valley. Mr. Means said there was a major problem in the Parktown area and if we really wanted to solve the parking problem, limit each household to three cars and if there's another car registered to that household, tax it starting at \$1,000 a year; if you really want to get serious about it, start with some number and keep working it up until the problem gets diminished enough so you can deal with it.

MOTION to close the public hearing.

M/S: Livengood, Polanski.

Ayes: 5

Councilmember Polanski said she knew people were saying it was just a parking issue, but she also believed it was a safety issue; she didn't believe this ordinance as proposed would negate anything that either Mr. Ferguson or Ms. Rodriguez brought up; it still allows the renting of rooms and it doesn't say you have to eat together. Councilmember Polanski further stated where she had a real problem was with the safety issue, she had no problem adding on to property so you can rent out more rooms; however, she believed that a garage was meant to house a car; she knew there were instances in the City where people have gotten out of their car in the driveway and have been attacked while walking to their front door, so she believed that if you have a garage and you have the ability to park in it, it definitely protects. Councilmember Polanski also said she believed there was a problem with parking and knew that the CAC was still working on addressing that; the ordinance just gives City staff another tool, but it does not disallow the ability to rent out rooms and utilize those common areas; she feared that some of these single family dwelling units would take a bedroom and a whole family moves in there and they have their little stove and they're cooking their meals in there and a fire starts. Councilmember Polanski commented that she would not be very pleased if her next-door neighbors had all of these different units with little kitchenettes and there was a fire and it affected her.

Vice Mayor Dixon said she agreed with a lot of what Councilmember Polanski said; it really does come down to safety and the inconvenience because of the parking; and she looked at this as being three-prong: (1) the issue of defining what constitutes a family unit; (2) garage conversions (something that needs more time, further discussion, more public input because it does ultimately change a neighborhood); and (3) unregulated parking (there has to be a mechanism for a portion of a neighborhood to come to the City to complain about over parking). Vice Mayor Dixon asked the City Attorney, with respect to the unconstitutionality and the fact that it violates both Federal and State law, if this was being done because it had been brought to us by a personal complaint. City Attorney Mattas responded no, the current ordinance was adopted back in 1955 and the specific language has been found to be unconstitutional in other decided cases; this was brought forward because the Council had actually asked for an opinion from his office on the issue. Vice Mayor Dixon commented that to cover all the concerns for the Mayor, the Council either accepts it as is tonight or the Council could tweak the wording to make it constitutional.

City Attorney Mattas said he was the one who created the impression of tweaking or modifying it; the Council talked about the enforceability of the ordinance, the types of questions that might be asked, and all he was saying to that effect was that the ordinance before the Council was what his office had recommended to the Council. Mr. Mattas further stated if the Council was concerned, there was language in the proposed ordinance that could be taken out that would just give fewer issues upon which to make a determination that, in fact, there was a compartmentalization living arrangement that might otherwise require an additional use permit as a boarding house, specifically, the definition in the proposed ordinance under section 2.69-1.5, the definition of a single housekeeping unit that reads “and shared housing activities and responsibilities such as meals, chores, and expenses”; those were characteristics that would be looked at to determine whether or not it was compartmentalized or whether it was actually operating as a single housing unit; if the Council preferred, that first sentence could actually stop right at the end of the third line where it talks about use of common areas which are not compartmentalized such as locked cabinets or doors.

Vice Mayor Dixon said it seemed more prudent just to correct what needs to be corrected, try it out for awhile, see what happens in the community, and the Council can always go back and amend it.

Mayor Esteves commented that we have to make our current ordinance constitutional in its language. Mr. Mattas said staff was suggesting that you have a definition of a single housekeeping unit in the ordinance that allows the public to understand what the standard is and meets constitutional requirements.

Councilmember Livengood commented that now as he understood it, the only thing being dealt with was the constitutionality issue. Mayor Esteves responded yes, and his reason was that he thought we are solving the wrong problem, the problem was parking and even this language was not effective. Councilmember Livengood asked what language changes needed to be made to meet the constitutional test. City Attorney Mattas responded the Council had a lot of discussion about the definition of single housekeeping unit; the ordinance also addresses noticing requirements, which had not been raised as an issue by the Council or the public; the other changes, setting aside for purposes of discussion anything related to garage conversions (which was a policy issue for the Council to decide), relate to the definition of family and housekeeping unit; if you change section 2.69-1.5 (as previously discussed), then the remaining changes really help to clarify what is really meant by that. Mr. Lindsay added that the majority of the changes were there to add clarity to the homeowner, to complement the definition of housekeeping unit, and the addition of regulations was when it came to the parking standards for boarding houses (to clarify what a boarding house was so it was very clear in the ordinance and then adding a parking regulation that currently does not exist for boarding houses).

Councilmember Polanski asked for clarification that garage conversions would still be allowed. Mr. Lindsay responded the ordinance before suggested no changes to the current

regulations, which allows them. Councilmember Polanski said she disagreed with that; however, she agreed with the rest of the ordinance, as modified by the City Attorney (section 2.69-1.5) and then bringing back for discussion garage conversions at another time and the parking, which the CAC is working on and will be making recommendations to the Council.

MOTION to adopt the Negative Declaration (EIA No. EA2004-1).

M/S: Polanski, Livengood.

Ayes: 5

City Attorney Mattas advised that the next part contained two components; one was to waive reading and to introduce the ordinance before the Council with the deletion of the fourth line of section 2.69-1.5 so that the first sentence would end with the word “doors,” otherwise the ordinance would remain exactly as it was and then there was separate direction to come back with further consideration of parking and garage conversions.

MOTION to waive reading beyond the title and introduce Ordinance No. 38.763, as modified (section 2.69-1.5) so that the first sentence ends with the word “doors”.

M/S: Polanski, Dixon.

City Attorney Mattas advised that with respect to the issue of garage conversions, the Council can direct that it wants further discussion on that; the issue has already gone through the Planning Commission and was before the Council; if the Council wanted to act on it, it could do that tonight; if the Council wants to get further public input before taking action on garage conversions, that was appropriate as well; if it is brought back, it would go back through the process again, the Planning Commission again would have advice on it, and a public hearing before the Council for adoption. Councilmember Polanski said she was getting a sense from the Council that they weren't ready to make a decision on that; she knew that there was a unanimous recommendation from the CAC, to which she was the liaison, against garage conversions, but she also knew at the Planning Commission it was a 4 to 3 vote; she believed this was an area that the Council needed to get additional input from the public and both bodies.

Vice Mayor Dixon, the second to the motion, commented that part of the difficulty she had was that it was unanimous from the CAC and she had their minutes; she didn't have the Planning Commission dialogue and was being asked to make a decision based on comments here and there but it would be very helpful to have the minutes; she didn't know if there was merit in that but she did want that information to come back to the Council so the Council would have more in-depth information.

City Attorney Mattas reminded the Council there was a motion and second on the floor; if the Council believed it would be helpful for the Council to receive a report which included the minutes, information of how you enforce garage conversions right now, that could be received as a report and at that point decide whether or not you want to direct it back to the CAC or the Planning Commission.

Councilmember Livengood said he agreed with getting more information; however, he was not sure if asking the CAC to rehash this and the Planning Commission was going to produce much of a value; he thought like Vice Mayor Dixon said, let's get the minutes from the Planning Commission meeting and we can ask questions that night and make a decision.

Councilmember Polanski, the maker of the motion, said she was comfortable with that direction. Vice Mayor Dixon, the second to the motion, also agreed.

City Attorney Mattas restated the Motion to waive reading of Ordinance No. 38.763 as amended to delete the fourth line of section 2.69-1.5 and to provide the direction to bring the garage conversion information back to the Council along with the minutes and the parking issues to be referred back as the direction of the Council this evening.

Mayor Esteves asked if the requirement of one parking space for each boarder was taken out. Mr. Mattas responded no, that was part of the motion before the Council; it stays in. Councilmember Polanski commented that boarder was different than a renter.

Mr. Mattas said if there were any negative votes, there would need to be a separate motion on the waiving of the reading beyond the title.

VOTE ON MOTION: Ayes: 4 Noes: 1 (Esteves)

MOTION to waive the reading beyond the title of Ordinance No. 38.763.

MS: Livengood, Gomez. Ayes: 5

MOTION to introduce Ordinance No. 38.763 with the amendment to section 2.69-1.5 (this motion to introduce supercedes the earlier motion which received a 4/1 vote).

M/S: Polanski, Livengood. Ayes: 4 Noes: 1 (Esteves)

Acting Planning Manager James Lindsay read the title of Ordinance No. 38.763 amending various sections of Chapter 10, title XI of the Milpitas Municipal Code relating to regulation of single-family residential districts and procedures for providing public notice.

RECESS

Mayor Esteves recessed the City Council meeting at 9:35 p.m. The City Council meeting reconvened at 9:46 p.m.

JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. CALL TO ORDER

Mayor Esteves called to order the regular meeting of the Milpitas Redevelopment Agency, meeting jointly with the City Council, at 9:46 p.m.

RA2. ROLL CALL

Present were Mayor Esteves, Vice Mayor Dixon, and Agency/Councilmembers Gomez, Livengood and Polanski.

RA3. MINUTES

MOTION to approve the Redevelopment Agency minutes of March 16, 2004, including joint meeting with the City Council, as submitted.

M/S: Gomez, Livengood. Ayes: 5

RA4. AGENDA

MOTION to approve the Agenda and Consent Calendar as submitted.

M/S: Livengood, Polanski. Ayes: 5

***RA5. LIBRARY RFP MIDTOWN RFP**

Approved the Request for Proposals for the new Library and directed staff to issue the RFP; approved the Request for Proposals for the new Midtown parking structure and directed staff to issue the RFP.

***RA6. CIVIC CENTER PROJECT**

Approved one change order and three purchase orders.

***RA7. AGREEMENT FOR REVIEW OF RDA FINANCIAL PRACTICES**

Authorized the Executive Director to execute an agreement with Stradling Yocca Carlson & Rauth to perform work reviewing Redevelopment financial instruments and techniques of incurring and sustaining indebtedness and other related Redevelopment issues.

***RA8. PROPERTY APPRAISALS**

Authorized the Executive Director/City Manager to enter into an agreement with Dana Property to prepare appraisals for certain real property in an amount not to exceed \$37,000.

**RA9.
ADJOURNMENT**

There being no further Redevelopment Agency business, Mayor Esteves adjourned the Redevelopment Agency meeting at 9:47 p.m.

The City Council meeting continued.

REPORTS OF OFFICERS & BOARDS

**3.
Cesar Chavez Holiday**

Mayor Esteves placed this item on the agenda and shared highlights of Cesar Chavez's life commenting that he was a farm worker leader of organized labor, considered to be a great humanitarian, the founder of the National Farm Workers Association, which merged later to become the United Farm Workers Union, and read a few quotes attributed to Cesar Chavez and a few paragraphs from a biography on Cesar Chavez. Mayor Esteves said he considered Cesar Chavez a great man who was willing to fight for what was right and was willing to sacrifice his own life so that the unions could continue. Mayor Esteves further stated he was very honored to recommend the City honor him with a paid City holiday but that it didn't go free, there was a price and from the information provided to the Council, the daily payroll rate for one day was approximately \$235,000; the actual out-of-pocket cost was 6 percent paid to the public safety officers or any other emergency workers that would be required on that day. Mayor Esteves said it was worth having the holiday and the greatness of Cesar Chavez really was a lot more than the expense or costs we might incur.

Councilmember Livengood said he preferred not to get into the pros and cons but to wait until the committee that the Council directed to go back and look at the different options for both Dr. King and Cesar Chavez has a chance to finish its work; he was not going to vote against the Mayor's motion but he was not going to vote for it either; the committee was close to issuing its recommendations and he preferred to wait until they get the information they had requested and then look at the pros and cons and costs associated; he thought we need to let them finish their job; it was not a pressing matter in terms of the date of the holiday since it was almost a year away; those 8 or 9 people serving on the committee have an expectation that they are going to make a recommendation to the Council and he would like to finish that; there was a meeting with them on the 22nd that would be the last meeting; so by the first meeting in May the Council will have a recommendation about both Martin Luther King and Cesar Chavez.

Mayor Esteves said he was aware of the committee but it was his understanding the committee was to consider naming streets or buildings, etc. to honor both Martin Luther King and Cesar Chavez; the holiday issue should not be a subject of discussion, everyone would save time, and it was mandatory to him that we honor him with a holiday, noting that the State, County, and Superior Court and City of San Jose has considered it a holiday, so to him it was not really subject to discussion.

Councilmember Gomez said he was not going to argue with anything that had been brought forward; he works for San Jose and the Mayor for the County and they both enjoy that holiday; he, as a Hispanic/American understood all the contributions Cesar Chavez has made to our society; but he also wanted to be respectful to the committee and would like to find out what their recommendation is before moving forward with anything.

Councilmember Polanski said she, too, was looking forward to the committee's recommendation on both Martin Luther King and Cesar Chavez; her concern was more budgetary and she would much prefer to have this looked at as part of the budget process. Councilmember Polanski further stated it always concerned her when the State or Federal Government issues another holiday and the cost is borne by the citizens of the community; when Santa Clara County looked at making this a holiday, it was a major impact and they were facing major budgetary constraints; so she would prefer to wait until the budget process because she was concerned about the services it would impact.

Mayor Esteves said to honor a great man was to really honor a great man, it was not the money being talked about because the budget wasn't being increased that amount, and as far

as he was concerned, it should not be a subject of discussion and he wanted to be decisive because of the values imparted by Cesar Chavez.

Vice Mayor Dixon said she knew of no one in dealing with a civil pioneer that comes close to him as to his direct impact in this valley; however, her concern was that the date had already been missed; she would like to get to the budget process because in looking at the preliminary information, out of the almost \$235,000, more than 50 percent goes to Police and Fire; she would like to have (for the budget hearings) an actual breakdown of how many police and fire are on that particular day. Vice Mayor Dixon said there was nothing to preclude the Council from going forward and proclaiming March 31st in honor of Cesar Chavez and still come back at the budget process; as far as the committee, the Council asked the committee to look at ways of honoring and naming but didn't talk about a paid holiday; and there were also negotiating factors with all the unions that the Council needed to be respectful of.

MOTION to honor Cesar Chavez by declaring March 31st as Cesar Chavez Day in the City of Milpitas and to look at the actual budgetary impacts during the budget process and the meet and confer issues with the labor unions for a paid holiday.

M/S: Polanski, Livengood.

Ayes: 5

**5.
Donation Request**

Mayor Esteves placed this item on the agenda and asked that the Council approve a \$100 contribution to the Rancho Milpitas Middle School to help support the School Yearbook. Mayor Esteves said this was in response to a request from the students after someone broke into the school and took the money they had raised, along with two cameras; it was learned that they had received funds to cover their loss and the small amount from the City was to support the Yearbook Project of the students and at the same time say that they are doing an important project.

MOTION to approve a contribution of \$100 to the Rancho Milpitas Middle School Yearbook Project from the Council's Community Promotions account.

M/S: Gomez, Polanski.

Ayes: 5

**7.
Economic Development Plan**

Principal Analyst Cindy Maxwell briefly reported that in November 2003, the Council approved a request from the Economic Development Commission for outside professional assistance to prepare a comprehensive Economic Development Plan; six firms responded to the City's request for proposal, the proposals were reviewed and the top consultants interviewed, and the firm of Applied Development Economics was recommended to prepare the Plan at a not-to-exceed amount of \$99,890, including a 10 percent contingency.

MOTION to approve the selection of Applied Development Economics as the consultant to prepare the Economic Development Plan and authorize the City Manager to execute the contract, subject to approval as to form by the City Attorney.

M/S: Polanski, Gomez.

Ayes: 5

NEW BUSINESS

**9.
Ethics Stakeholder Report**

Acting Planning Director Tambri Heyden presented a summary of the Ethics Project to date leading up to the Stakeholder Report, which was before the Council. Ms. Heyden reported the survey was sent to a random sample of 1,200 Milpitas households and since only 100 surveys were completed by the March 22 deadline, the date was extended to March 28 and a total of 187 completed surveys were received. Ms. Heyden reviewed the Strengths outlined in the report and the questions asked along with the responses. Ms. Heyden also reviewed *Weaknesses* outlined in the report along with *Opportunities* to improve public trust and employee morale, *Threats* that included the concern that nothing will change or that an ethics code will give false hopes, and *Conclusions* that leaders need separate politics from the stable and efficient management of the City, need to assess the impact of patterns of

Councilmembers disagreeing with each other on Tuesday night and playing it out in the newspaper, and to guard against threats by carrying out the recently adopted Code Plan. Ms. Heyden reviewed the next tasks reporting that one workshop had been concluded and three were left and on May 5, the Community Advisory Commission was expected to approve the draft Code, guidelines, and implementation plan and they would be coming on to the Council for approval. Ms. Heyden said the action before the Council tonight was to approve the Stakeholder Report and she and Dr. Shanks were available for questions.

Councilmember Livengood asked how many citizens responded to the survey. Dr. Shanks responded a total of 187 were received and 184 were valid. Councilmember Livengood said he thought that was a small number for the size of the City and inquired about the demographics. Dr. Shanks said he thought it was a pretty representative group of people, commented on the ethnic mix, male to female ratio (60/40), number of years living in Milpitas (a range of 2 to 49 years with 14 years the average), and the Council would be receiving a full report on this. Dr. Shanks commented that the report was still within a 3-½ percentage points of error on either side, and he felt the numbers could be trusted.

Mayor Esteves inquired how many surveys were sent out. Dr. Shanks responded 1,200 households were invited to respond with a limit of two surveys per household. Mayor Esteves asked Dr. Shanks based on statistical knowledge, how representative was this compared to the total population. Dr. Shanks responded he was 95 percent sure (a confidence level of 95 percent) what was being represented was accurate within 3 ½ percentage points on either side; the results looked pretty representative to him, and it seemed to be a valid survey.

Vice Mayor Dixon commented on the recent loss of Measure B (County Library Measure) stating that out of nine cities, they polled between 400 and 600 people so looking at the ethics survey results, they looked higher. Vice Mayor Dixon further commented that the survey was lengthy, she didn't see any benefit if it were to go out again right now because it's tax season, and she was quite pleased with 184.

Councilmember Polanski said she was pleased as well and was also pleased that 44 interviews were accomplished. Councilmember Polanski also commented that there were a lot of different people at the first workshop so it looked like a good cross-section of people were participating. Councilmember Polanski said she thought a lot of the information was interesting, was very pleased with the process, thought the CAC, staff, and the Steering Committee have been very pleased with the process, and was pleased with the workshop.

MOTION to approve the Ethics Stakeholder Report.

M/S: Dixon, Polanski.

Ayes: 5

12. Staffing Changes to Support CIP Special Projects

City Manager Wilson reported that City Engineer Mike McNeely and Assistant City Engineer Greg Armendariz would present this item. Assistant City Engineer Armendariz began by reviewing the Capital Improvement Program Goals and Objectives and reported that for the 17 Midtown Improvement Projects, a new Special Projects Section was being established using some existing personnel, the addition of some new positions, and the contracting of specialized consultant services with all of the funding for staff and consultants from restricted capital project monies, with no impact on the City's General Fund. Mr. Armendariz said the recommended additional positions were one Associate Civil engineer and two Assistant Civil Engineers; in addition, filling of an existing vacant Accountant in the Finance Department to help support the Capital Improvement Program was requested.

City Engineer Mike McNeely reported upon the retirement of the Traffic Engineer, staff was looking at the responsibilities of the Traffic Section and with the recent long term disability of another Traffic Section employee, staff was recommending under filling the vacant Traffic Engineer position with a new Principal Transportation Planner (funded 90 percent from the General Fund) and continue using consultant expertise as needed.

Mayor Esteves reported the Council CIP Subcommittee (the Mayor and Councilmember Polanski) had reviewed the proposal and were supportive.

Vice Mayor Dixon expressed her support for the proposal commenting that Milpitas was one of the few cities in a position to move forward with projects and it was all to the benefit of the community.

Councilmember Gomez inquired what another Transportation Planner was being proposed and how was it different. Mr. McNeely responded because of limited money, this would provide the ability to develop that expertise and a Traffic Engineer in-house. Mayor Esteves inquired if by doing that, will it fill the gap left by the Traffic Engineer. Mr. McNeely responded that this was a highly qualified position and felt the market is out there to attract a qualified person.

Councilmember Polanski commented that the Subcommittee did meet on the CIP Projects and she was very supportive of these positions. Councilmember Polanski further commented that only three of the projects in the Midtown were highlighted tonight but an amazing amount of work has been accomplished this year to meet the CIP goals and a very aggressive program was planned for next year so it was very important to have these positions.

Mayor Esteves said he thought we should be more serious about the CIP Projects, they also include water sewer and parks and all of these projects impact our residents, and he was very happy as long as the objectives are kept and the goals are completed.

MOTION to approve three new engineering positions (one Associate Civil Engineer and two Assistant Civil Engineers) and the filling of the vacant Accountant position for the Capital Improvement Program and approve the new Principal Transportation Planner position.

M/S: Polanski, Dixon.

Ayes: 5

ORDINANCE

13. Ordinance No. 43.200 Traffic Code Introduce

City Engineer Mike McNeely reported that based on staff's engineering study, the ordinance before the Council would amend the Traffic Code to provide for traffic control to add North Park Victoria Drive, from Kirkwall Place to the north City limits, to the speed survey list enabling the use of radar for enforcement of a 25 mph speed.

City Attorney Mattas read the title of Ordinance No. 43.200 amending Chapter 100, Title V of the Milpitas Municipal Code amending the Traffic Code.

MOTION to waive the reading beyond the title.

M/S: Polanski, Dixon.

Ayes: 5

MOTION to introduce Ordinance No. 43.200.

M/S: Polanski, Livengood.

Ayes: 5

ADJOURNMENT

There being no further City Council business, Mayor Esteves adjourned the City Council meeting at 10:49 p.m.

Gail Blalock, City Clerk

The foregoing minutes were approved by the City Council as submitted on April 20, 2004.

Gail Blalock, City Clerk

Date

APPROVED MINUTES
CITY OF MILPITAS

Minutes:	Special Meeting of Milpitas City Council
Date of Meeting:	March 22, 2004
Time of Meeting:	5:30 p.m. (Closed Session)
Place of Meeting:	City Hall Council Chambers, 455 E. Calaveras Blvd.

ROLL CALL

Mayor Esteves called to order the Special Meeting of the Milpitas City Council at 5:30 p.m. Present were Mayor Esteves, Vice Mayor Dixon (arrived at 5:32 p.m.), and Councilmembers Gomez, Livengood, and Polanski.

CITIZENS FORUM

Mayor Esteves invited members of the audience to address the Council on any subject not on the agenda, requesting that remarks be limited to two minutes or less.

There were no requests.

CLOSED SESSION

Mayor Esteves publicly stated the Council would convene in Closed Session to discuss the following item listed on the Special Meeting Notice:

1. **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**
(Pursuant to Government Code Section 54956.9[b])
Significant exposure to litigation
One Case

Mayor Esteves adjourned the meeting to closed session at 5:31 p.m.

RECONVENE

The Special City Council reconvened with all members present at 6:14 p.m.

**CLOSED SESSION
ANNOUNCEMENTS**

Staff was given direction and no action was taken.

ADJOURNMENT

There being no further Council business, Mayor Esteves adjourned the Special City Council meeting at 6:15 p.m.

Gail Blalock, CMC
City Clerk

**The foregoing minutes were approved by the City Council as submitted on
April 6, 2004.**

Gail Blalock, City Clerk

Date

APPROVED MINUTES
CITY OF MILPITAS

Minutes:	Regular Meeting of Milpitas City Council (Including Joint Meeting with Redevelopment Agency)
Date of Meeting:	March 16, 2004
Time of Meeting:	6:00 p.m. (Closed Session) 7:00 p.m. (Regular Session)
Place of Meeting:	City Hall Council Chambers, 455 E. Calaveras Blvd.

ROLL CALL

Mayor Esteves called to order the regular meeting of the Milpitas City Council at 6:00 p.m. Present were Mayor Esteves, Vice Mayor Dixon, and Councilmembers Gomez (arrived 6:05 p.m.), Livengood (arrived 6:05 p.m.), and Polanski.

CLOSED SESSION

Mayor Esteves publicly stated the Council would convene in Closed Session to discuss the following six items listed on the agenda and supplemental agenda:

1. **CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**
(Pursuant to Government Code Section 54956.9[a])
Title: Milpitas v. Turner Construction et al.
Santa Clara County Superior Court Case No. CV008400
2. **CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**
(Pursuant to Government Code Section 54956.9[a])
Title: Milpitas v. Pacific Gas and Electric
Santa Clara County Superior Court Case No. CV790089
3. **CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**
(Pursuant to Government Code Section 54956.9[a])
Title: Milpitas v. McCarthy, et al.
Santa Clara County Superior Court Case No. CV790091
4. **CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**
(Pursuant to Government Code Section 54956.9[a])
Title: Milpitas v. Santa Clara Valley Water District
Santa Clara County Superior Court Case No. CV790093
5. **CONFERENCE WITH REAL PROPERTY NEGOTIATOR**
(Pursuant to Government Code Section 54956.8)
Property: APN #022-08-042
Negotiating Parties: City of Milpitas and County of Santa Clara
Agency Negotiator: Thomas J. Wilson
Under Negotiation: Terms and Conditions for Disposition or Lease
6. **CONFERENCE WITH REAL PROPERTY NEGOTIATOR**
(Pursuant to Government Code Section 54956.8)
Property: APN Nos. 86-12-015, 86-12-016, and 86-12-020
Negotiating Parties: Milpitas Redevelopment Agency/City and Abel Trust
Agency Negotiator: Thomas J. Wilson
Under Negotiation: Terms and Conditions for Acquisition of Property

Mayor Esteves adjourned the meeting to Closed Session at 6:01 p.m.

The City Council meeting reconvened at 7:09 p.m. with Mayor Esteves presiding and Vice Mayor Dixon and Councilmembers Gomez, Livengood, and Polanski present.

**CLOSED SESSION
ANNOUNCEMENTS**

There were no Closed Session announcements.

PLEDGE	Members of Troop No. 92 led the Council and audience in the Pledge of Allegiance.
MINUTES	<p>MOTION to approve the City Council minutes of March 2, 2004, including joint meeting with the Redevelopment Agency, as submitted.</p> <p>M/S: Dixon, Polanski. Ayes: 5</p>
SCHEDULE	<p>Vice Mayor Dixon added the VTA Finance Administration meeting on March 18, a VTA Workshop on March 19, a Special Meeting of the Santa Clara County Library Joint Powers Authority on March 25 to discuss the failure of Measure B and possible service cuts, and the San Jose/BART Policy Advisory Board meeting on March 31, 2004, at 3:00 p.m.</p> <p>MOTION to approve the Schedule of Meetings as amended.</p> <p>M/S: Dixon, Polanski. Ayes: 5</p>
PRESENTATIONS	<p>Mayor Esteves asked Emergency Services Coordinator George Washburn to join him at the Podium to assist in presenting Commendations to the SAFE Class 9 graduates. Mayor Esteves read the list of graduates, Lynette Antorov, Todd Bradford, Jack Callison, Antonella Como, Mary Fairchild, Oscar "Skip" Hicks, Carla Kearin, Robert Kearin, Syed Mohsin, and Josephine Nguyen, asking those present to come forward to receive their commendation.</p> <p>Mayor Esteves asked Police Sergeant Max Nobida to join him at the podium to assist in presenting Commendations to the citizens who participated in the Milpitas Police Department Senior Volunteer Program. Present to accept commendations were Jean Andona, Ted Armstrong, Butch Dennis, Margaret Fisher, Mary Jane Hill, Geneva Jackson, Lillian Kupiec, Pat Nathan, Bob Roberts, Claire Schroeder, Betty Lee Stein, Ed Wagner, Betty Won, and Ron Won; unable to be present were May Chan, Ken Doll, Rita Hofmann, Nancy Sigsby, Richard Sigsby, Patti Wang, and Jane Wong.</p> <p>Mayor Esteves read a Commendation recognizing the Milpitas Toastmasters #7242 on celebrating 15 years of excellence and presented it to the Club's President. The President of the Club thanked the Mayor and Council for the recognition, stating that it was an honor and privilege to be present.</p> <p>Mayor Esteves read a Commendation recognizing Francis R.G. Briones on his achievement of the rank of Eagle Scout and presented it to Mr. Briones. R.G. Briones thanked the Mayor, City Manager, and City staff for making it possible for his Eagle Court of Honor to be held at City Hall last Saturday. Mayor Esteves recognized R.G.'s parents, who were present in the audience, and commented that he and Vice Mayor Dixon had attended the Eagle Court this past Saturday.</p>
CITIZENS FORUM	<p>Mayor Esteves invited members of the audience to address the Council on any subject not on the agenda, requesting that remarks, including any visual or technology-assisted presentations of any kind, be limited to two minutes or less, and noted that the City Clerk would be using the timer and when the red light at the podium came on, two minutes would be up.</p> <p><u>Mareile Ogle</u>, Milpitas, thanked the terrific team of Althea Polanski and Cindy Maxwell for inspiring the Committee Members to make the recent 50th Anniversary Celebration a success. Ms. Ogle said she had a complaint about the future May 1 Global Village, which she felt would not be successful because as of December, only 11 nations out of a possible 186 were signed up to be exhibited with only one (France) of a possible 25 European countries was represented. Ms. Ogle further stated she thought this was because of the new rules requiring each group to be responsible for three booths and one would have to sell food. Ms. Ogle said it was too late for this year but asked that it be changed for next year. Mayor Esteves said he would pass on the information to the committee in charge.</p>

Debbie Giordano, Milpitas, said she wanted to put on the official record her personal opposition to the process and timing of the recent raise given to the City Manager noting that she had voiced her opposition in the Milpitas Post last week. Ms. Giordano further stated her concern was that the public was never asked if anyone wanted to speak on the issue and it was rushed ahead before she had a chance to get up and voice her opposition. Ms. Giordano informed the Council that she would like to speak on Items 3 and 4 on tonight's agenda.

Manuel Gabriel, Milpitas, expressed concern about the I680 corridor sound wall stating that in the past couple of months there had been changes in the plans resulting in moving the sound wall and leaving half of the neighborhood without a sound wall. Mr. Gabriel commented on a La Palma Court meeting, about which the rest of the neighborhood was not notified that this was going on, and now the State had decided to put a sound wall on the freeway at more cost than the original sound wall and leaving the people who live down Hillview with nothing. Mr. Gabriel said he had given information to the Clerk, including a picture looking out his kitchen window at the freeway, he can see the lights from his downstairs bedroom, the noise was horrendous, they were told that the State was going to do this sometime in 2008 or 2006, and asked why they would have to wait because somebody on La Palma doesn't like the height of the wall while we're suffering from the sound.

Ed Blake, Milpitas, said he wanted to underscore the remarks concerning the sound wall made by his neighbor, Mr. Gabriel; in 2001, Caltrans did an elaborate presentation at the Community Center describing the massive amount of sound walls that would take place sometime in 2003; it was now 2004 and he didn't see any walls; the residents were working together and had contacted the Sunnyhills Association, whom they understood had had a previous problem with sound walls, and asked that the Council support and assist them in this effort.

Rob Means, Milpitas, said about a year ago he attended an anti-war demonstration in San Jose, there would be another march against the war this Saturday, and invited everyone to come out.

Mr. Swanson said it was nice to hear adults learning how to speak to people. Mr. Swanson also spoke about the speed bumps on Carnegie Drive that had flattened because of heavy truck traffic and about speeding on the street.

ANNOUNCEMENTS

Councilmember Gomez requested a staff update on the sound wall issue. City Manager Thomas Wilson responded that staff had been working with the neighbors, direction was being provided by the City Engineer's office, staff was equally frustrated with the difficulties with the funding, which was the result of the State's condition, and a report would be given to the Council.

Mayor Esteves said he had also been watching the development of the sound wall, had attended one of the meetings, and would continue to monitor the development. Mayor Esteves thanked the neighborhood for being militant and, at the same time, very positive for the sake of their neighborhood and for the betterment of Milpitas.

Councilmember Gomez said his kids were watching their first Council meeting and, if they were still awake, wished them good night.

Councilmember Polanski said she appreciated getting the invitation to the meetings (about the sound walls) with the neighbors, but she hadn't had a free night to attend; a meeting was scheduled later this month that she also wouldn't be able to attend but asked that they please keep her informed. Councilmember Polanski reminded everyone that the Milpitas Unified School District/Foundation for Education Crab Feed was this Friday but she understood the event was sold out and thanked everybody who supported this endeavor. Councilmember Polanski also thanked the Chamber of Commerce for its recent Crab Feed, which she enjoyed. Councilmember Polanski reported that the Community Advisory Commission held one of its longest meetings to consider the CDBG funding recommendations and commended the volunteers for their hard work on behalf of the City this month. Councilmember Polanski

congratulated the Knights of Columbus for honoring three people this Saturday at the 30th Annual Awards Dinner and Dance and congratulated Firefighter of the Year Steven King, Police Officer of the Year Henry DeKruyff, and Citizen of the Year Marilyn Hay.

Vice Mayor Dixon added that Marilyn Hay is the Chair of the Library Advisory Commission and last night the Commission approved their mission statement and work plan, which would be coming to the Council on April 6. In regard to the sound wall issue, Vice Mayor Dixon commented that everytime this group had a meeting, she was at a VTA meeting where so many struggles were going on right now for funding, the cuts had been so severe to Caltrans, but as a member of the VTA Board representing the City of Milpitas, gave her assurance that something will be done and it wouldn't fall through the cracks.

Mayor Esteves congratulated the Art of Living Foundation for sponsoring a very nice Peace Concert at the Community Center; congratulated the three awardees Marilyn Hay, Citizen of the Year; Henry DeKruyff, Police Officer of the Year; and Steven King, Firefighter of the Year; and as a member of the Knights of Columbus, the Mayor invited everyone to attend the Awards and Banquet on March 20 at the Community Center.

AGENDA

MOTION to approve the agenda as submitted.

M/S: Polanski, Livengood.

Ayes: 5

CONSENT CALENDAR

Mayor Esteves inquired if anyone wished to make any changes to the Consent Calendar. Councilmember Gomez asked that item 4 be removed.

MOTION to approve the Consent Calendar, items with asterisks on the agenda, as amended by the removal of item 4, in accordance with the staff recommendations.

M/S: Polanski, Livengood.

Ayes: 5

***2. Appointment**

Approved the Mayor's appointments to the Arts Commission as follows:

- * Donnie Ettinger to fill the vacancy created by Barbara Barrie, for a term expiring October 2006.
- * Harriet McGuire from Alternate 2 to Alternate 1, for a term expiring October 2005.
- * Angela Gupta to the Alternate 2 position, for a term expiring October 2004.

***7. Knights of Columbus Fee Waiver**

Approved the request from the Knights of Columbus to waive the rental fees totaling \$323.00 for use of the Community Center Auditorium on March 20, 2004.

***8. Manor Pump Station (Project Nos. 3385 & 3396)**

Adopted Resolution No. 7389 granting initial acceptance subject to the one-year warranty period and reduction of the faithful performance bond to \$ 26,064.20.

***9. Initial Acceptance Interim Senior Center Modularity (Project No. 8151)**

Adopted Resolution No. 7390 granting initial acceptance subject to the one-year warranty period and reducing the faithful performance bond to \$31,900.

***10. Interim Senior Center Site Improvements (Project No. 8151)**

Adopted Resolution No. 7391 granting initial acceptance subject to the one-year warranty period and reducing the faithful performance bond to \$7,558.

***11. Plans & Specs (Project Nos. 4200, 4222, & 8149)**

Approved plans and specifications. Authorized advertising for construction bid proposals for Singley Area Street Rehabilitation, Marylin Drive Sidewalks, and Sports Center Master Plan Improvements.

- *12.
Hall Park Walkway
(Project No. 5058)** Approved plans and specifications. Authorized advertising for bid proposals for construction.
- *13
MLS Soccer
Summer 2004 Soccer Camp** Approved and authorized Recreation Services to enter into a contract with Major League Soccer for Summer 2004 Soccer Camp Programs not to exceed \$10,000.00, subject to approval by the City Attorney.
- *14.
Skyhawks Sports Program
Summer 2004 Sports Camps** Approved and authorized Recreation Services to enter into a contract with Skyhawks Sports Program for Summer 2004 Sports Camps not to exceed \$20,000.00, subject to approval by the City Attorney.
- *15.
O'Brien Kreitzberg
Montague Expwy. Widening
(Project Nos. 4178, 4179, 4180
4133, 4186, 5069, 7086, 7098)** Approved Amendment No. 5 to the Agreement between the City of Milpitas and O'Brien Kreitzberg authorizing an assignment of the rights and obligations of that contract to URS Corporation Americas as the successor to O'Brien Kreitzberg.
- *16.
Harris Design, Athletic Court
Resurfacing (Project No. 5069)** Authorized the City Manager to enter into an agreement with Harris Design in the amount of \$71,035, subject to approval as to form by the City Attorney.
- *17.
Dan Cloak Environmental
Consulting** Authorized the City Manager to execute the consultant agreement with Dan Cloak Environmental Consulting for a not-to-exceed amount of \$36,000.
- *18.
Network Storage Equipment** Approve the purchase of network storage equipment from Winchester Systems in the an amount not to exceed \$29,825.74.
- *19.
Payment Requests
Miscellaneous Vendors** Approved the following purchase requests.
1. \$8,392.27 to Folger Graphics for printing of a four-color, six page annual residential Recycling program newsletter and mailing preparation for the Utility Engineering Division. (Funds are available from the Engineering Division operating budget for this service.)
 2. 9,203.42 to United GreenTech for the purchase of Rain Master radio controlled irrigation control equipment to be used to remotely control irrigation functions on Sinclair Road for the Trees and Landscape Maintenance Function. This is a portion of equipment required to implement Phase 5 of the central automated irrigation management system allocated in the 98-1 Lighting and Landscape Maintenance District. (Funds are available from the Public Works, 98-1 Lighting and Landscape Maintenance District Fund operating budget for this purchase.)

PUBLIC HEARINGS

- 1.
Negative Declaration
Introduce Ord. No. 38.763
(Continue)** City Manager Wilson reported that staff was requesting the Council continue adoption of the Negative Declaration and introduction of an ordinance amending the Zoning Code to the April 6, 2004, Council meeting (to allow staff additional time to prepare the Zoning Code text amendments that relate to single family dwellings and to allow review by the Community Advisory Commission).
- Mayor Esteves opened the public hearing and asked if anyone wished to speak. Rob Means, Milpitas, said he understood the purpose of this ordinance was to cut down on the number of cars parked in neighborhoods but to address that particular issue, he thought it should be more expensive, more difficult, or more costly or something about cars so there won't be so many cars in the neighborhoods, and suggested attacking the problem directly rather than indirectly.

MOTION to continue the public hearing to April 6, 2004.

M/S: Polanski, Livengood.

Ayes: 5

JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

**RA1.
CALL TO ORDER** Mayor Esteves called to order the regular meeting of the Milpitas Redevelopment Agency, meeting jointly with the City Council, at 7:48 p.m.

**RA2.
ROLL CALL** Present were Mayor Esteves, Vice Mayor Dixon, and Agency/Councilmembers Gomez, Livengood, and Polanski.

**RA3.
MINUTES** MOTION to approve the Redevelopment Agency minutes of March 2, 2004, including joint meeting with the City Council, as submitted.

M/S: Polanski, Livengood.

Ayes: 5

**RA4.
AGENDA** MOTION to approve the Agenda and Consent Calendar as submitted.

M/S: Livengood, Polanski.

Ayes: 5

**RA5.
LIBRARY PROJECT UPDATE** Capital Improvements Program Manager Mark Rogge presented a brief update on the Library Project reporting that staff was working on a draft request for proposals for the architectural design based on the Council approved Needs Assessment Study and Library Building Program. Mr. Rogge further reported that staff was drawing on the experience with the City Hall building and working with the City Attorney on legal reviews and with IS to create online information; the environmental process (CEQA documents) was moving along; utility undergrounding and relocation was underway; and hiring a consultant architectural team was anticipated in June.

MOTION to note receipt and file.

M/S: Gomez, Polanski.

Ayes: 5

**RA6.
ABEL ST. IMPROVEMENTS
CONSULTANT AGREEMENT** Councilmember Livengood said he had a discussion with the City Attorney last week and he did have a conflict of interest related to this item; he didn't have a relationship with the applicant but a business he had an interest in has been a source of income from KB Homes and as a result, he would need to abstain on this item and left the Council Chambers.

Assistant City Engineer Greg Armendariz reported the item before the Council this evening involved Abel Street Midtown improvements and staff was excited to initiate the first step in the implementation phase of the Midtown Plan. Mr. Armendariz presented background information on the Midtown Specific Plan noting that the Specific Plan called for transformation of Abel Street into a boulevard setting conveying vehicles to and from Calaveras and Great Mall Parkway; Main Street called for transformation into a pedestrian friendly environment with shops where people would park and walk and also called for streetscape enhancements. Mr. Armendariz reported at the last Council meeting, the Council approved entering into three-party agreements with Santa Clara County and KB Homes for development of the County-owned parcels surrounding the Elmwood facility and adjoining Abel Street; KB Homes plans to build 823 new homes, a new City park, and will be required to construct improvements on Abel Street between Corning and Great Mall Parkway consistent with the Midtown Specific Plan streetscape standards.

City Attorney Steve Mattas stated for the record that the Mayor would also be stepping down because of a property interest that may be impacted and staff would have that confirmed before the next action on this. The Mayor passed the gavel to Vice Mayor Dixon and left the Council Chambers.

Mr. Armendariz continued reporting that the developer would be conditioned to improve Abel from Great Mall to Corning and the City would complete improvements from Corning to Weller Street; KB Homes had agreed to pay \$275,000 for its share of the design and preparation of construction plans and specifications; the City's share of the design costs was \$375,000; and in accordance with the City's consultant selection process, staff selected JMH Weiss, Inc., to provide the design services. Mr. Armendariz reviewed the recommendation to approve a new CIP project for Abel Street Midtown Improvements and to authorize the City Manager to execute an agreement for design services with JMH Weiss, Inc.

Vice Mayor Dixon inquired about the infrastructure portion of what KB will do and asked if it would include any fiber optics. Mr. Armendariz responded staff would be evaluating all the existing utilities and future needs now in existence now and if there was a need to bring in fiber optics, it would be included with KB paying its fair share.

Councilmember Gomez asked if the Penitencia Creek trail was out of the scope of the project. Mr. Armendariz responded the Penitencia Creek trail had been identified and there was an element included for the trail.

Vice Mayor Dixon commented that KB Homes was very cooperative with the School District and there was a possibility that KB will allow one of the street names to be auctioned off and the School District would appreciate any added revenue. Vice Mayor Dixon acknowledged School Board Member Marsha Grilli in the audience.

MOTION to:

1. Approve a new CIP project for Abel Street Midtown Improvements and a budget appropriation of \$275,000 from developer contributions and \$375,000 from the 2003 RDA Bond Proceeds (total \$650,000); and
2. Authorize the City Manager to execute an agreement for services with JMH Weiss, Inc., in the amount not to exceed \$600,000, subject to approval as to form by the City Attorney.

M/S: Polanski, Gomez.

Ayes: 3

Abstain: 2 (Esteves, Livengood)

Mayor Esteves and Councilmember Livengood returned to their seats.

***RA7.
PROPERTY APPRAISAL**

Authorized the City Manager to obtain appraisal services relative to an evaluation of APN 022-08-042 for a not-to-exceed amount of \$15,000.

JOINT MILPITAS FINANCING AUTHORITY, REDEVELOPMENT AGENCY, AND CITY COUNCIL MEETING.

**FA1.
CALL TO ORDER**

Mayor Esteves called to order the joint meeting of the Milpitas Financing Authority, Redevelopment Agency, and City Council meeting at 8:06 p.m.

**FA2.
ROLL**

Present were Mayor Esteves, Vice Mayor Dixon, and Councilmembers Gomez, Livengood, and Polanski.

**FA3.
AGENDA**

MOTION to approve the agenda as submitted.

M/S: Polanski, Gomez.

Ayes: 5

**FA4.
DEFEASE SERIES 2000
BONDS
GREAT MALL**

City Manager Thomas Wilson reported this was a continuation of the work that started with the vision to redesign and restructure the Redevelopment Agency to accommodate a whole series of projects, to restructure financially the Redevelopment Agency and look to providing greater support and benefit to the City's General Fund and developments as they come forward. Mr. Wilson reviewed some background information reporting that when the Great

Mall was developed, there was a need for a lot of infrastructure work to be done to change the character of the area and to improve the amenities from utilities to streets and roadways; to finance that effort, the City issued \$10 million in bonds to accomplish the improvements and looked to sales tax revenue generated from the Great Mall and pledged one-half of the sales tax to pay off the debt resulting in it being a very positive opportunity for the Great Mall to locate in Milpitas. Mr. Wilson further reported that since that period of time, the City has been held accountable for one-half of the sales tax to pay off the debt; within the restructuring of the Redevelopment Agency, there was now the opportunity to shift the funding of that debt and move it to a Redevelopment funding source and free one-half of the sales tax to come to the General Fund. Mr. Wilson explained the proposal to defease the 2000 Great Mall Bonds by substituting restricted use Redevelopment Funds from Project Area 1 for unrestricted sales tax revenue would immediately produce an additional approximate \$1.1 million in annual sales tax revenue for the City's General Fund. Mr. Wilson noted that Tom Dunphy of Lamont Financial, a member of the team of financial advisors, was present along with staff members who worked on this project Blair King, Assistant City Manager, Finance Director Emma Karlen, City Attorney Steve Mattas, and staff of the City Attorney's Office. Mr. Wilson stated that the adoption of the Eighth Amendment to the Redevelopment Plan created the conditions to allow for this substitution, the Great Mall improvements benefit the Project Area No. 1, and with the exception of the pledge of sales tax, the terms of the 2000 Bond would remain the same.

Councilmember Livengood inquired if the 2000 action included some kind of refinancing. Mr. Wilson responded there was a refinancing of the debt about the time he arrived, early in 2000, to restructure the debt for a more favorable interest rate.

Mayor Esteves inquired if refinancing would be better at this time. Mr. Wilson responded the cost was being moved over to the Redevelopment Agency, which was inexpensive money, and substituting that security for the sales tax. Mayor Esteves asked if there was any penalty for prepayment. Mr. Wilson said if we were to prepay or pay it off, penalties would be incurred so it was better to leave it in place until its maturity. Mayor Esteves asked what was the net cost to the City. Mr. Wilson responded there was just a transfer cost in order to substitute the securities. Assistant City Manager Blair King added that the estimated cost to do this was \$40-50,000 and in response to the Mayor's earlier question, the earliest call date for the bonds was 2009.

Vice Mayor Dixon commented that because of the City's bond rating, that interest rate was extremely low, this was very creative, other cities with large Redevelopment Agencies have done this, the City of Milpitas just hadn't brought in this type of experience before, this was a first for Milpitas and very beneficial to assist the General Fund.

MOTION to adopt Redevelopment Agency Resolution No. RA218 authorizing an expenditure of Tax Increment Revenue in an amount not to exceed \$7 million to defease the Great Mall of the Bay Area Sales Tax Revenue Bonds, Series 2000.

M/S: Dixon, Polanski.

Ayes: 5

MOTION to adopt Milpitas Public financing Authority Resolution No. FA0009 authorizing the defeasance of the Authority's Great Mall of the Bay Area Sales Tax Revenue Bonds, Series 2000, and approving related agreements and actions.

M/S: Dixon, Polanski.

Ayes: 5

**FA5.
ADJOURNMENT**

There being no further Financing Authority business, Mayor Esteves adjourned the Financing Authority meeting at 8:22 p.m.

**RA8.
ADJOURNMENT**

There being no further Redevelopment Agency business, Mayor Esteves adjourned the Redevelopment Agency meeting at 8:22 p.m.

The City Council meeting continued.

REPORTS OF OFFICERS & BOARDS

3. Protocol for Public Records Access to Public Meetings

Councilmember Gomez placed this item on the agenda and noted he had placed extra copies of his memo in the agenda rack for members of the audience. Councilmember Gomez said what he was hoping to do with this policy was to take care of all open government policies with one policy; the Council had supported SCA1 in the past that takes the burden of proof from the requestor to say why a record should be public and puts it on the agency. Councilmember Gomez further stated he was asking the City Attorney to give guidelines and develop a protocol that would provide guidelines for open government and access to records and access to meetings, bring it back to the Council, and eventually that could be put into an ordinance.

Vice Mayor Dixon said she agreed, some of the things had merit, a lot of the things were already being done, and this is what actually got her involved with the government process when a developer came in and wanted to develop part of the hillsides. Vice Mayor Dixon further stated she was disappointed that a lot of those decisions were made behind closed doors before the public had a chance to comment, so she agreed there was always room for more transparency in government. Vice Mayor Dixon commented on a sample City Council handbook the City Attorney had provided to her and Councilmember Polanski (when the Council City Attorney Subcommittee met) last year and asked that included in the direction to the City Attorney tonight be a request for the City Attorney to research and provide a matrix of where every city in the Bay Area is at in terms of this.

Councilmember Polanski commented that she thought a handbook would be helpful to new members of the Council because no guide was given to her as to what to do as a Councilmember and she also didn't receive one when she was on the School Board. Councilmember Polanski said she would also like to see as part of this a formal review process for the City Manager and City Attorney, which she thought would be helpful to the Council. Councilmember Polanski said she was glad to hear that a lot of what was in the document was already being done, she supported open government, School Board closed sessions were always recorded, she agreed with all the concepts, and asked if there was a list of entities referred to on page 2 of the memo. Councilmember Gomez responded this was something the City Attorney would research and bring back to the Council. Councilmember Polanski expressed concern for the 10 day time frame for minutes. Councilmember Gomez said that would be a set guideline to give the public an opportunity to look at draft minutes. Councilmember Polanski asked if there would be a certain standard for daily calendars, commenting that she uses the calendar the Council receives in their packets. Councilmember Gomez said the goal was so that the public knows what and when we are meeting any time we are doing the City's business.

Councilmember Polanski said she voted no on supporting SCA1 because it doesn't apply to State Government and State elected officials; when it applies to them as well, there will be more trust in government. Councilmember Polanski thanked Councilmember Gomez for bringing this forward.

Councilmember Livengood asked for clarification when the handbook was given to the Council. City Attorney Mattas clarified that the entire Council hadn't receive it as it was provided as part of the City Attorney Subcommittee's work; however, if the Council would like copies, the type of policies proposed are generally included in a compiled policy, and it could be included. Vice Mayor Dixon said that was what she was requesting.

Councilmember Livengood commented that the list Councilmember Gomez had put before the Council was a specific set of recommendations that go beyond State law and what is being done today; it would make some very significant changes and be landmark legislation; and he supported each and every one of the items without any hesitation and was pleased this item was before the Council. Councilmember Livengood asked what was the timing on this and

how would it look when it comes back. City Attorney Mattas said he would like to understand exactly how the Council wants it to come back; there were, from his professional opinion, some issues that were policy issues for the Council and he thought it would be helpful for the Council to see some of these through hypotheticals in implementation because there were significant issues raised by some of them and there were also some timing issues; if the Council wanted as part of a response back, he could provide them with some hypotheticals of how some of these would look in implementation because it was an expansion over what the Public Records Act requires right now and something the Council should understand fully the impacts should the Council decide to adopt the policy as presented right now; and if the Council wanted that type of information, it would be four to six weeks (at least two meetings) before he could get back to the Council. Mr. Mattas further stated that the request from Vice Mayor Dixon for comparison of how other communities deal with this may take a little more time.

Mayor Esteves said he agreed with the City Attorney about approaching this on a policy level first; he wanted to have information from other cities and was confident that Milpitas has been practicing open government but it just needs to be put into policy. Mayor Esteves further stated that the law needs to be conformed to and business transacted prudently while still protecting the residents and protecting exposure to liability; he believed in open policies but they must be done the right way.

Councilmember Gomez said this was a policy and not an ordinance yet; he was willing to look at other cities but didn't want to prevent this from moving forward; none of this was new and cities around the State have been doing this.

Vice Mayor Dixon clarified when she said she would like a comparison with other cities, it was because she was particularly concerned about potential litigation, for current litigation the City was currently involved in, because there was such a major liability to the taxpayers and it could potentially cost the taxpayers millions and that was the reason behind her request to see what other cities have because they may have what she called a "lessons learned" book on litigation lawsuits that have come out of this.

Debbie Giordano, Milpitas, said she strongly supported the open government sunshine proposal before the Council and believed the people of Milpitas owned a great debt of gratitude to Councilmember Gomez for bringing this forward. Ms. Giordano further stated that over the last few months she had been meeting with and talking with many members of the community and it had become clear there is suspicion and cynicism about government; the action by the Council two weeks ago and the manner in which it was done re-enforced that feeling in Milpitas; and Milpitas needs real leadership and decisions must be made in a more open and public manner.

Vice Mayor Dixon thanked Council Candidate Giordano for her political statement tonight but she wanted to get a clarification from the City Attorney as to the recent acquisitions by Ms. Giordano.

City Attorney Mattas stated that the Council's action at the last meeting met all the requirements of the Brown Act, the item was properly agendaized, the Council discussed it, in fact there was extensive discussion of it, and it met all the requirements of the Brown Act. Mayor Esteves asked the City Attorney to restate his comments loud and clear. Mr. Mattas said that, as he had indicated, the Council's action was appropriate, the item was on the agenda, it had been considered appropriately in Closed Session as part of Labor Negotiations, the Council acted on it in the open session and took appropriate action in compliance with the Brown Act.

Vice Mayor Dixon offered a motion to direct staff according to the Council's discussion. Councilmember Polanski seconded the motion. City Attorney Mattas said he wanted to understand the Council's direction and asked if it included the hypothetical examples. Vice Mayor Dixon said it included the hypothetical examples, the survey, the sample handbook,

and standard evaluation process for the City Manager and City Attorney. Councilmember Polanski, the second to the motion, agreed. Councilmember Gomez asked the City Attorney if the Council could take action on some of the items considering the way the item was agendized. City Attorney Mattas said as he understood the motion as to the policy before the Council tonight, the Council wished to receive hypotheticals, information of how this type of policy is implemented or exists in other communities, the Council also wanted a report as to the specific policy that Councilmember Gomez has set forth; as to the issue of the handbook and evaluation process, that would be in the form of direction with staff to come back because the Council's hasn't seen all of those; and he would not bring it all back as one comprehensive document unless the Council directed him to do so.

MOTION (restated) to direct the City Attorney to develop a policy for public access to meetings and for disclosure of public records, request the City Attorney provide a survey of how other cities in the Bay Area handle public meetings and access to public records and provide hypothetical examples of how the policy would look, and further directed the City Attorney to bring back copies of a sample Council Handbook and a standardized process for evaluating the City Manager and City Attorney.

M/S: Dixon, Polanski.

Ayes: 5

**4.
SBX4-3 & ABX4-1
Support of Workers
Compensation Reform
Legislation**

This item was removed from the Consent Calendar by Councilmember Gomez who stated in looking over the legislative analysis, he had some problems with the proposed draft letter because it takes away the presumptive from our public safety officers, there was no guarantee that insurance premiums would go down, and it was too restrictive for working families; he felt this issue needed to be hammered out more by the legislature and so he would not be supporting the letter as written.

Councilmember Polanski asked for a brief staff report.

Principal Analyst Cindy Maxwell reported this came from the Legislative Subcommittee of the Economic Development Commission (EDC) and was based on letters from the League of California Cities. Ms. Maxwell noted that the Economic Development Commission Chair Diane McDonough and Legislative Subcommittee Member Frank De Smidt were present in the audience.

Mayor Esteves commented, as liaison to the EDC, they would like to support this because Workers Compensation costs have been increasing tremendously and driving businesses out of California.

Diane McDonough and Frank De Smidt addressed the Council. Mr. De Smidt said they have been attempting to have a voice from Milpitas and this was a chance; Workers Compensation is the number one issue for the California economy for the business community; if this legislation fails, it will go to the voters in November; if the Legislature passes it, there was a good chance there will be some savings for the City of Milpitas sooner than later and the sooner the costs go down, the sooner the business climate will improve. Mr. De Smidt further commented that Workers Comp reform is the number one, high on the list and is wanted sooner rather than waiting to put it on the ballot. Mr. De Smidt urged the Council to support this letter of support for reform with the main thrust to reduce costs to the City and the City employees. Ms. McDonough added that a lot of cities in California support this and the Commission would like Milpitas to be proactive.

Vice Mayor Dixon asked if the Chamber had addressed this. Mr. De Smidt responded yes, the Chamber has been supporting Workers Comp reform for a long time.

Councilmember Livengood said the letter didn't mention the presumptive issue for public safety and asked if they were aware of how the bill impacts the presumptives as it relates to public safety employees. Mr. De Smidt said he was not aware of the bill in great detail, that was something that probably would be discussed in the legislature and in committee meetings

and perhaps amended conditions made to address that issue, but to toss the whole bill out and not try to improve on it would be a mistake. Councilmember Livengood said nobody was going to argue Workers Compensation reform was needed; however, he was concerned about the presumptive issue for Public Safety. Councilmember Livengood further stated he supported Workers Compensation reform, it was long overdue, but would condition his vote and was not supportive of removing those presumptives for public safety personnel. Councilmember Livengood further stated he hoped that once we get beyond Workers Compensation reform, we can look at the other issues chasing people out of this state.

Councilmember Gomez asked if this meant the Commission agreed with Councilmember Livengood's recommendation there should be a condition for presumptives. Mr. De Smidt said that issue wasn't brought up in the Subcommittee; he had nothing against exploring it but, at this time, he couldn't speak for the Commission.

Mayor Esteves commented that the Commission was supporting reform as a whole.

Vice Mayor Dixon said she thought this was a "no brainer", the voters made it clear when the voters elected a new Governor, the Governor was dead serious about this, it was going to happen one way or another, and applauded the Commission for bringing this forward and she would be supporting it as submitted.

Councilmember Gomez said he wanted to make sure if the Council was supporting Workers Compensation reform or specifically this bill. Mr. De Smidt said this was support of the League of California Cities support for two bills.

Debbie Giordano, Milpitas, said the current Workers Compensation Program and costs associated with it were hurting every working family in California; she fully supported Workers Compensation reform; however, she could not support the two bills the Council was being asked to support; she felt they were reform in its extreme and placed reform on the backs of working men and women; reform was needed based on compromise and suggested the City support Workers Compensation reform that is neither the agenda of the right or the left but one that balances all interests and is the result of negotiations and compromise and that represents good public policy.

Councilmember Polanski commented that Workers Comp reform has been negotiated, discussed, reviewed, on the left, on the right, and in the middle for years and nothing has been down; she also wanted to applaud the Economic Development Commission for looking at this and bringing a sound recommendation to the Council, we have to start somewhere, and she would be supporting the recommendation.

MOTION to authorize the Mayor to send the proposed draft letters in support of SBX4-3 and ABX4-1.

M/S: Dixon, Polanski.

Ayes: 4

Noes: 1 (Gomez)

Councilmember Livengood clarified that his vote was contingent on the presumptive issue for Public Safety.

Mayor Esteves informed the Council that the Economic Development Commission was working very hard, more action items would be coming forward from the Commission, and thanked the members of the Commission for all their contributions.

UNFINISHED BUSINESS

5. Odor Control Action Plan Update & Consultant

Principal Civil Engineer Darryl Wong introduced representatives from the Wastewater Pollution Control Plant and BFI who were present in the audience. Mr. Wong reviewed key activities since the last report commenting that staff was working on March and April outreach

Agreement

by distributing door hangers in neighborhoods in the north westerly area of the city and the Bay Area Air Quality Management District began implementing the final stage of the rapid notification program. Mr. Wong reported that staff had negotiated a professional odor control advisory services agreement with Cal Recovery for odor expertise to supplement the staff and to help with community outreach on an as-needed basis. Mr. Wong further reported the number of complaints logged in for October was 96, November 50, December 16, January 31, February 11, and March 15. Mr. Wong pointed out an error in the agenda information stating that the recommendation was to approve an agreement and not an agreement amendment.

MOTION to note receipt and file progress report and authorize the City Manager to execute the agreement with Cal Recovery Inc., in the amount of \$10,000, subject to approval as to form by the City Attorney.

M/S: Dixon, Polanski.

Ayes: 5

NEW BUSINESS

6. Ethics Code Development

Acting Planning Director Tambri Heyden reported Task 1 of the City's ethics project involved three deliverables: a stakeholder report, a recommended plan for preparing the ethics code, and a citizens awareness survey that was approved at the March 2, 2004, Council meeting and was deployed on March 10, 2004, for completion on March 24, 2004. Ms. Heyden further reported receipt of the stakeholders report was being postponed until March 29, 2004, after the additional stakeholder interviews were conducted; therefore, an amendment to the consultant contract to reflect the cost for the additional interviews and a modified schedule were being submitted to the Council for review. Ms. Heyden noted that the modified schedule would not affect the critical dates for adoption of the code and necessary training prior to the election

Ms. Heyden pointed out a correction to the list of names for additional interviews (Karen Serpa was shown as a local campaign consultant partner of Victor Ajlouny and should be listed as an independent consultant retained periodically by Mr. Ajlouny). Ms. Heyden also made a correction to the contract amendment amount (for the additional interviews) stating that it should be \$3,300 rather than \$1,500, for a total amount not to exceed \$25,260.

Ms. Heyden reviewed the five Decision Points before the Council for consideration reporting that Decision 1 (Nature) - the Code be a living document; Decision 2 (Leaders) - it apply to the City Council, all Board and Commission members, candidates running for election, the City Manager, and Senior staff, with leadership resting with the City Council and City Manager; Decision 3 (Content) - the Code describe the City at its best with a set of specific behavior; Decision 4 (Writing) - the Code be developed collaboratively through four CAC hosted sessions with wording assistance provided by the Steering Committee; and Decision 5 (Future) - there be an accountability process and that those involved in drafting the Code be asked for input.

Ms. Heyden noted that Dr. Shanks was present to answer questions regarding the Decision Points and staff was recommending the Council approve the Decision Points and the amendment to the contract.

Councilmember Gomez noted that Rick Callendar on the list to be interviewed was not a campaign consultant but rather a representative of the NAACP.

Mayor Esteves expressed concern that he was hearing for the first time names for interviews that were not Milpitas residents and asked what the results or impact would be to the City and what would be the weight of their input. Dr. Shanks responded that from his experience, the broader the net (in terms of information gathered) can be cast, the better the results; people from outside the City would have some influence in the City in some of the areas being talked about; the real weight would be on the residents of Milpitas but these people are also stakeholders and have played a part in the past. Mayor Esteves expressed further concern that

the area outside Milpitas is too big and wanted to make sure that a good cross-section outside Milpitas was represented. Dr. Shanks said from all the people he had met, these are people whose names have come up in the interviews and he thought these were all people who have played a role in the past.

Councilmember Polanski commented that Rick Callendar (on the list) also works for the Santa Clara Valley Water District and Dan Terry (also on the list) was a former resident. Councilmember Polanski said she was quite pleased the additional cost was only \$1,500 when adding the 17 names from Councilmember Gomez and two names from the Mayor and expressed concern that the Council could keep coming up with more names and stall the process. Councilmember Polanski said she had read through the Plan, she knew the CAC, the Steering Committee, and everyone was working diligently, and hoped there would be a good turnout from the stakeholders. Ms. Heyden corrected the amendment amount stating it was \$3,300 based on an hourly rate for the additional interviews.

Dr. Shanks said he had left out a phrase in the Plan that he felt changed the nature of the paragraph and called attention to the last paragraph on page 10 of the Plan stating that the statement in the third sentence was about the Council and was not meant about the City Manager or Senior staff. Dr. Shanks said the examples given in this document were not about Milpitas but rather talking in general terms. Dr. Shanks commented that he would write the stakeholders report from his independent view, it was important for everybody to understand that he would write what he would write; if there was something he misunderstood, that was where the staff could be very helpful; there was a good deal of concern about whose consultant he was and he hoped that through this whole process he would be everyone's consultant and no one's consultant; being from New York, he tended to be independent and when the stakeholders report was written, everyone will be happy and everyone will be upset if he does his job right.

Vice Mayor Dixon stated while discussing this item, she wanted to make a public statement of discovery in keeping with the good faith entrusted in her as an elected official. Vice Mayor Dixon said that since the last Council meeting, her husband and son found an unidentified package on one of their cars; inside was potentially damaging information on Planning Commissioner, Council Candidate, and her neighbor, Debbie Giordano; it was entitled "People for Dixon"; a few days later a voicemail message was left for her from a man who identified himself as the private investigator assigned to the Giordano case; she then became alarmed, especially with the Council discussing this right now. Vice Mayor Dixon further stated she got the feeling she was being set up but didn't know by whom; she assumed it would not be by Ms. Giordano or her campaign backers because she was not sure why she would want this distributed. Vice Mayor Dixon said she sought legal advice and it saddened her to state publicly that she will personally not use this information in the upcoming election; she was concerned that there was no way of knowing whether this information had already been disbursed; she had no name or phone number; this was a prime example of what concerned her as we do this; it had been very distressing to her; and she had contacted the City Attorney who recommended she find her own legal advice.

MOTION to approve the Plan for developing the Ethics Code and Amendment No. 1 to the Ethics Project Scope of Work for additional interviews at a cost not to exceed \$3,300.

M/S: Gomez, Polanski.

Ayes: 5

ADJOURNMENT

There being no further Council business, Mayor Esteves adjourned the City Council meeting at 9:39 p.m.

Gail Blalock, CMC
City Clerk

The foregoing minutes were approved by the City Council as submitted on April 6, 2004.

Gail Blalock, City Clerk

Date

APPROVED MINUTES
CITY OF MILPITAS

Minutes:	Regular Meeting of Milpitas City Council (Including Joint Meeting with Redevelopment Agency)
Date of Meeting:	March 2, 2004
Time of Meeting:	6:00 p.m. (Closed Session) 7:00 p.m. (Regular Session)
Place of Meeting:	City Hall Council Chambers, 455 E. Calaveras Blvd.

ROLL CALL

Mayor Esteves called to order the regular meeting of the Milpitas City Council at 6:00 p.m. Present were Mayor Esteves, Vice Mayor Dixon, and Councilmembers Gomez, Livengood, and Polanski.

CLOSED SESSION

Mayor Esteves publicly stated the Council would convene in Closed Session to discuss the following one item listed on the agenda:

1. CONFERENCE WITH LABOR NEGOTIATOR

(Pursuant to Government Code Section 54957.6)

Agency Negotiator: Steve Mattas

Unrepresented Employee: City Manager

Mayor Esteves adjourned the meeting to closed session at 6:01 p.m.

The City Council meeting reconvened at 7:00 p.m. with Mayor Esteves presiding and Vice Mayor Dixon and Councilmembers Gomez, Livengood, and Polanski present.

**CLOSED SESSION
ANNOUNCEMENTS**

Mayor Esteves stated there were no Closed Session announcements at this time; however, there would be a discussion regarding the Closed Session item when item 7 on the agenda was heard.

PLEDGE

Members of Troop No. 92 led the Council and audience in the Pledge of Allegiance.

MINUTES

MOTION to approve the City Council minutes of February 17, 2004, including joint meeting with the Redevelopment Agency, as submitted.

M/S: Gomez, Polanski.

Ayes: 5

SCHEDULE

Councilmember Polanski reminded everyone that the 50th Anniversary Committee would be meeting on Monday, March 29, 2004, at 6:30 p.m.

MOTION to approve the Schedule of Meetings as amended.

M/S: Polanski, Gomez.

Ayes: 5

PRESENTATIONS

Mayor Esteves read a Proclamation recognizing the Black History Living Legacy Hall of Fame and this year's inductees Sandra Edwards, Dr. Geraldine Forte, Beverly James, and Jim Johnson. Sandra Edwards expressed appreciation to the Council for taking this opportunity to recognize them and said it was a real pleasure serving this community. Dr. Geraldine Forte thanked the Council commenting that receiving this award was like coming back home as she started her teaching career at Samuel Ayer High School. Beverly James thanked the Council commenting that it was really exciting this particular year because of the 50th anniversary of Brown v. Board of Education that outlawed segregation. Jim Johnson thanked the Council for the honor and recognition commenting that he was one of the first residents in Milpitas and the first Black graduate of Ayer High School.

Mayor Esteves announced that he had signed a Proclamation recognizing March 2004 as "Colon Cancer Awareness Month" and it would be mailed to the appropriate persons.

Mayor Esteves read Commendations recognizing the Chinese Club and Vietnamese Club at Milpitas High School for their collaboration in producing the extraordinary program on February 12, 2004, in celebration of Lunar New Year. The Commendations were accepted by Ada Chang, President, and Johnson Eung, Vice President of the Chinese Club, and by Huong Tran, President, and Cecilia Duong, Treasurer of the Vietnamese Club.

Mayor Esteves recognized Brenda Wong, Advisor for the Clubs, who was present in the audience. Ms. Wong passed out bookmarks in honor of the 100th birthday of Dr. Seuss.

CITIZENS FORUM

Mayor Esteves invited members of the audience to address the Council on any subject not on the agenda, requesting that remarks, including any visual or technology-assisted presentations of any kind, be limited to two minutes or less, and noted that the City Clerk would be using the timer and when the red light at the podium came on, two minutes would be up.

Dr. Karl Black, Superintendent, Milpitas Unified School District, thanked Sandra Edwards, Beverly James, and Geraldine Forte for their years of dedication as teachers and thanked and congratulated the members of the Vietnamese and Chinese Clubs present. Dr. Black announced the upcoming Crab Feed and Silent Auction fundraiser sponsored by the District on March 19, 6:00 p.m. at Napredak Hall and encouraged everyone to buy tickets available through any School District Office, at Sushi Lovers Restaurant, or the Milpitas Post. Dr. Black noted the tickets were \$35 with the proceeds going directly into the classrooms, and the event was also sponsored by the Milpitas Foundation for Education.

Mr. Swanson said it was very thrilling to be associated with the visitors from China and those who live here, and he hoped someday to go to China to explain the idea of how we can teach young people in the 3rd grade the beginnings of algebra to understand numbers and to perform at that young age. Mr. Swanson said this number system was a universal language and the sooner we bring it down to our custom and culture at an early age, the better for everyone.

ANNOUNCEMENTS

Councilmember Polanski commented on the very impressive and exciting Grand Opening of the Senior Center Annex Modulars on Saturday with over 350 people attending and thanked Mark Rogge and his staff along with the Recreation staff for their work. Councilmember Polanski said she enjoyed the Chamber's Crab Feed and Silent Auction the past Friday night. Councilmember Polanski further stated she, along with the rest of the Council, had received a letter from the Emergency Housing Consortium thanking the City for its leadership role in addressing youth homelessness and read a few comments from the letter. Councilmember Polanski acknowledge City employees Gloria Anaya and Felix Reliford for their efforts on the project and to affordable housing.

Vice Mayor Dixon said she also attended the Interim Senior Center Opening, had a lot of fun and was impressed by the number of people attending that day. Vice Mayor Dixon asked that staff report back to the Council regarding an inquiry she had received from Bob Williams, a resident and property owner, concerning a solid frame fence at Park Victoria and Jacklin that was blown down in a storm in October 2000 and why there has been no remedy to the fence.

Vice Mayor Dixon reported on the construction activity surrounding the Tasman East/Capitol light rail that was tentatively scheduled to open July 1st; and on the VTA Finance Administration meeting a week ago where the Committee recommended to the VTA Board that the agreement for the 237 interchange landscaping with Caltrans be amended to shift the final landscaping design responsibility back to the VTA. Vice Mayor Dixon further reported Milpitas hosted the monthly BART to San Jose meeting where the 15 BART stations were reviewed; the VTA was looking at an aerial crossing at Dixon Road rather than at grade, which Milpitas opposed because of concern for the visual impact and potential vibration. Vice Mayor Dixon also reported that Friday she attended a VTA Board workshop and expressed concern that the Board was still putting off the request to look at restructuring the Board; some new members on the Board were starting to group together with Palo Alto and

looking at electrification of CalTrain as a priority that conflicted with BART, so there might be an internal struggle.

Councilmember Livengood reminded everybody that today was Election Day, the polls were open until 8:00 p.m., and encouraged everyone to do their civic duty and vote.

Mayor Esteves congratulated and thanked artist Marianne Calabrese for her 9/11 theme display at the Phantom Art Gallery at the Community Center and congratulated all the newly installed officers of the Milpitas Historical Society.

AGENDA

MOTION to approve the agenda as submitted.

M/S: Gomez, Polanski.

Ayes: 5

CONSENT CALENDAR

Mayor Esteves inquired if anyone wished to make any changes to the Consent Calendar. There were none.

MOTION to approve the Consent Calendar, items with asterisks on the agenda, as submitted in accordance with the staff recommendations.

M/S: Gomez, Livengood.

Ayes: 5

***4. Ordinance No. 261 Public Facilities Use Rules**

Waived full reading of the ordinance. Adopted Ordinance No. 261 adding Chapter 18 to Title V of the Milpitas Municipal Code to authorize enforcement of posted use rules and regulations at designated public sites and facilities.

***5. Comcast Noncompliance**

Adopted a resolution finding Comcast of California in franchise noncompliance for failure to install an Institutional Network, for failure to provide a studio for residents to produce PEG Programming, for failure to correct grounding issues, and for failure to properly remit franchise fees.

***6. Coyote Creek Trail (Project No. 4206)**

Adopted resolution demonstrating acceptance of the grant award from the Santa Clara Valley Water District. Approved a budget appropriation of \$89,400 of the Santa Clara Valley Water District grant.

***8. SBC Agreement**

Authorized the City Manager to approve a Conduit License Agreement between the City of Milpitas and SBC California for the exchange of City owned conduit and SBC owned conduit subject to approval as to form by the City Attorney.

***9. Professional Convergence Solutions**

Authorized the City Manager to approve an Agreement between the City of Milpitas and Professional Convergence Solutions for annual hardware, software and support services through February 28, 2007, in an amount not to exceed \$54,432 subject to approval as to form by the City Attorney.

***10. Milpitas Library Project (Project No. 8153)**

Authorized the City Manager to execute the agreement amendment with Harris and Associates in the amount not to exceed \$29,915.00, subject to approval as to form by the City Attorney.

***11. Harris & Associates Agreement Various Land Development Projects**

Approved agreement and authorized City Manager to execute the agreement for engineering services, subject to approval as to form by the City Attorney.

***12. Luhdorff & Scalmanini Agreement**

Authorized the City Manager to entered into the agreement amendment with Luhdorff & Scalmanini subject in the amount not to exceed \$10,000 subject to approval as to form by the City Attorney.

**Well Upgrade Program
(Project No. 7076)**

***13.
O'Brien Kreitzberg
Project Mgmt Services
Various CIPs**

Authorized the City Manager to execute the agreement amendment with O'Brien Kreitzberg for project management services for fees not to exceed \$329,650, subject to approval as to form by the City Attorney.

***14.
Great Mall Pkwy
Street Trees and Mulch
(Project No. 4133)**

Approved plans and specifications. Authorized advertising for bid proposals for construction.

***15.
2 File Servers
(Project No. 8107)**

Awarded the bid for the file server to Surah, Inc. as the lowest bidder in the amount of \$15,211.29 and authorize the purchase.

***16.
Miscellaneous Vendors**

Approved the following purchase requests:

1. \$6,906.74 to Tractor Equipment Co for low-pressure pump and holding tank hydraulic cylinder repairs and replacement of boom controls on the sewer hydro truck for the Fleet Maintenance Function. (Funds are available from the Public Works Department operating budget for this repair.)
2. \$9,255.38 to TBL Packaging & Distribution for the purchase of 15,000 desk side recycling containers for the Commercial Recycling Program for the Utility Engineering Function. The cost includes the cardboard containers, printing on four sides, die cuts, setup charges and delivery charges. (Funds are available from the Engineering Division operating budget for this purchase.)
3. \$7,794.00 to All American Rentals for the purchase of a replacement aerial work platform to be used by staff for providing access to the interior high reach areas of all city facilities for routine maintenance operations for the Facilities Maintenance Function. All American Rentals submitted the lowest bid. (Funds are available from the Equipment Replacement Fund for this purchase.)

PUBLIC HEARINGS (NONE)

JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

**RA1.
CALL TO ORDER**

Mayor Esteves called to order the regular meeting of the Milpitas Redevelopment Agency, meeting jointly with the City Council, at 7:30 p.m.

**RA2.
ROLL CALL**

Present were Mayor Esteves, Vice Mayor Dixon, and Agency/Councilmembers Gomez, Livengood, and Polanski.

**RA3.
MINUTES**

MOTION to approve the Redevelopment Agency minutes of February 17, 2004, including joint meeting with the City Council, as submitted.

M/S: Gomez, Polanski.

Ayes: 5

**RA4.
AGENDA**

MOTION to approve the Agenda and Consent Calendar as submitted.

M/S: Gomez, Polanski.

Ayes: 5

***RA5.
AUDIT SERVICES
MAZE & ASSOCIATES**

Authorized the extension of the contract for audit services with Maze and Associates Accountancy Corporation for fiscal year 2003/2004.

***RA6.
PARCEL APPRAISALS
NOLTE & ASSOCIATES**

1. Authorized the City Manager to execute the agreement amendment with Nolte & Associates in the amount of \$71,000, subject to approval as to form by the City Attorney;
2. Approved the budget appropriation of \$80,000 for Project No. 8154 for the additional services plus staff time.

**RA7.
ADJOURNMENT**

There being no further Redevelopment Agency business, Mayor Esteves adjourned the Redevelopment Agency meeting at 7:31 p.m.

The City Council meeting continued.

REPORTS OF OFFICERS & BOARDS

**1.
Agenda Publication**

Councilmember Gomez placed this item on the agenda and reported that he recently attended a United Neighborhoods Conference of Santa Clara County and one of the more common complaints from neighborhood associations throughout Santa Clara County was problems in obtaining staff reports and information from staff since most cities release their agenda information on Thursdays like Milpitas does; in response, some cities have moved their release date up as much as 10 days like San Jose. Councilmember Gomez said by releasing the agenda on Thursday, as Milpitas does, it only allows up to two business days for community members and organizations to talk to staff, educate themselves on an item or take a position, and in some cases organize their neighbors; if the staff reports were published on Tuesday, like he was proposing, the earlier date would allow residents two more days to review the information, talk to staff, organize their neighbors, and also serve our weekly publications allowing them to report on items before they are considered. Councilmember Gomez said he realized there could be some problems with items before other commissions (i.e., Planning Commission) that meet on Wednesday; however, he thought those items could be handled through amended agendas.

Councilmember Livengood asked for clarification that the issue was the agenda getting out to community groups. Councilmember Gomez responded the agenda and staff reports being made available at an earlier date.

Councilmember Livengood inquired when the agenda was mailed. City Clerk Gail Blalock responded that the agenda was no longer mailed since it was available online and the staff reports were also available online; the agenda and staff reports were ready at the end of the day on Thursday and were made available online by Friday afternoon. Councilmember Livengood asked what was the impact of moving the schedule up two days. City Manager Wilson said staff could handle any date the Council proposes but when, as Councilmember Gomez addressed, some action was needed following a Planning Commission meeting, to update the staff report or amend the agenda would take some work; the posting to the web site could occur on Thursday if the completion date was pushed to Wednesday afternoon and policy direction in the past was that none of that happens until the material was fully ready for the Council. Councilmember Livengood said he thought that was a good policy and didn't have a problem moving up the process a couple of days, from Thursday to Tuesday, but expressed concern that any earlier could run into serious issues and he wanted to stay away from amended agendas.

Councilmember Polanski said she really didn't like amended agendas or something coming to her at a meeting and expressed concern about moving the date back; with the web access, she frequently receives calls prior to her reading the agenda; she had not been approached or heard any concerns about the timing of the staff reports and was curious what groups were coming forward with concerns because she hadn't received any.

Vice Mayor Dixon said she hadn't received any comments from community members, commented that normally with a big project, interested people are notified through a different process, and her concern, having dealt with the VTA's amended agendas, was that amended agendas can be confusing. Vice Mayor Dixon also expressed concern for the extra workload it would put on staff and the potential that something that really needs to be on the agenda could be pushed out an additional two weeks because of the earlier deadline. Vice Mayor Dixon suggested pushing it back one day to see how it works but was hesitant to push it back two days.

Mayor Esteves expressed concern that it might penalize a project and pointed out that the current schedule really allows five days (Friday through Tuesday). Mayor Esteves said he hadn't received any complaints or heard any concerns.

Councilmember Livengood said he had received complaints but that was before the agenda was available on the Internet; since people are depending more and more on the Internet, maybe one day earlier (24 hours) could be tried to see what happens, to see if staff could do it without any problem, and if it doesn't work, it could always be changed back.

City Manager Wilson said staff could probably accommodate one day without a problem but shifting it two days would be a little difficult because of the way the days fall, staff hadn't received any complaints, and if the Council would like to try it for a period, staff would need a little time to ramp up and suggested a short trial period with a report back to the Council.

Councilmember Gomez said it appeared he wasn't going to get support for moving it up two days and would be happy to settle for one day; his reasons for asking for two days were so that weekly publications could have an opportunity to report on items they might deem important before the meeting and in the interest of making government more open to the public.

Councilmember Polanski said she still was concerned with moving it up one day because of the hiring freeze, all departments were down on staff, and staff was continually being asked to do more with less. Councilmember Polanski suggested waiting until after the budget process when we see where we are with the hiring and the impact on the departments because she was really concerned about impacting staff more than they are now.

Mayor Esteves inquired why the hardcopy comes before the electronic copy. Information Services Director Bill Marion explained that the attachments (the packet information) are received by IS in hardcopy form and need to be converted to electronic format; the agenda document is received electronically.

MOTION to direct staff to release the Council agenda and staff reports on the Wednesday prior to the Tuesday Council meeting on a trial basis for six months, with the start date to be determined by staff.

M/S: Gomez, Livengood.

Councilmember Gomez asked the City Manager how much time would be needed. City Manager Wilson responded about a month, suggesting starting with the first meeting in May.

VOTE ON MOTION: Ayes: 4 Noes: 1 (Polanski)

Councilmember Polanski stated she had no objection to moving the date up for access by the public; however being down on staff, she would have preferred to wait until after the budget cycle into the new year.

2. Sister City Relationship

Public Information Specialist Leslie Stobbe reported the item before the Council was a request for a Sister City relationship and approval of a Memorandum of Understanding with Huizhou City, China, and introduced Sister Cities Commissioner Dennis Grilli who was the Commission's lead contact person. Mr. Grilli reported last year the Sister Cities Commission

recommended to the Council a sister city relationship with Huizhou, China; Francis Chien of the Huizhou-Milpitas Sister City Committee made an extensive presentation to the Commission and following subsequent discussions, the MOU was defined for the relationship between Milpitas and Huizhou City, the mainstays of the exchange being cultural, educational, and a student exchange to benefit both communities; and the details would be drafted by the Commission and the Committee. Mr. Grilli further reported the Commission expressed concern about the financial relationship and the Huizhou Sister City Committee responded to that concern and is clearly well prepared to support this relationship both financially and with local personal support.

Johnson Shi, Deputy Director, Bureau of Foreign and Overseas Chinese Affairs, Huizhou Municipality, said he was pleased to be present to introduce the Council to his City of Huizhou, and thanked the Milpitas Sister Cities Commission and the Huizhou Sister City Committee for their work and for giving him this chance to make a presentation. Mr. Shi, using a PowerPoint presentation, showed photographs of Huizhou City, a coastal city in southern China, described some of the city's history, environment, and climate, and welcomed everyone to visit Huizhou City.

Mr. Grilli stated that the Sister Cities Commission recommended approval of the relationship as defined in the MOU and introduced Commission Chair Debra Garcia. Chair Garcia announced the Sister City Committee had its officers in place and was now recruiting for members; and the paperwork was being filed through the City Attorney's office.

Mayor Esteves welcomed Mr. Shi to Milpitas and thanked him for taking a great interest in Milpitas. Mayor Esteves commented that Mr. Shi had a very beautiful city and he was sure Milpitas and Huizhou would have a great cultural exchange. Mayor Esteves congratulated the members of the Committee and supporters who were present because they were important in sustaining the relationship. Mayor Esteves also congratulated the Sister Cities Commission for being very active.

MOTION to approve the Sister Cities Commission's recommendation to enter into a two-year sister city relationship with Huizhou City, China, and authorize the Mayor to sign the original MOU at a future Council meeting.

M/S: Livengood, Dixon.

Ayes: 5

Mayor Esteves presented a token souvenir from Milpitas' 50th Anniversary Celebration to Mr. Shi. Mr. Shi presented the Mayor and Council with a Chinese painting of West Lake in Huizhou City.

Dennis Grilli said he wanted to bring to the Council's attention the help that Leslie Stobbe has been to the Commission in establishing this sister city relationship as well as the sister city relationship with the Philippines.

NEW BUSINESS

3. Ethics Survey

Acting Planning Director Tambri Heyden summarized the ethics project to date reporting that over the past four weeks, Dr. Shanks, the ethics consultant, conducted 25 one-on-one interviews to obtain background and observe the culture of the City, in addition, a group stakeholders interview was conducted at a public meeting held by the Community Advisory Commission on February 18, 2004, and attended by 27 individuals. Ms. Heyden described the citizens survey process defined by the Ethics Steering Committee to distribute a survey to a random sample of Milpitas households (1,184) limiting the survey to two per household; the purpose of the survey was to gather information about citizens' experiences and satisfaction with government and services, attitudes about public trust and confidence, and citizen beliefs about important standards to include in an ethics code necessary to proceed with the ethics code development.

Ms. Heyden said one additional question was proposed by the Ethics Steering Committee to be added to gauge the public's opinion of incorporating an accountability system into the program. Ms. Heyden reviewed the next steps and timeline, reported that a stakeholder report and code preparation plan would be brought forth to the Council on March 16, with June 1 as the target date for Council approval. Ms. Heyden reviewed the recommendation to approve the survey for translation and release and noted Dr. Shanks was present to answer any questions.

Councilmember Gomez commented said he wanted to make sure the whole process was inclusive and when he was asked in his interview who else he would suggest be interviewed, he provided a list of names but didn't see that they were included. Ms. Heyden responded that they could be included. Councilmember Gomez asked if Dr. Shanks had shared the list with her. Ms. Heyden responded no but it wasn't too late for them to be interviewed. Councilmember Gomez said his only concern was that he knew other Councilmembers added names and those people were interviewed. Councilmember Gomez further stated during this whole process, when we start looking at the strengths, weaknesses, and opportunities, he wanted those people to be interviewed and hadn't seen them on the list. Ms. Heyden said they could be included and it wasn't too late. Councilmember Gomez said he thought it was very important that this process be inclusive because he didn't want to set up a process where we guarantee re-election of the incumbent again.

Vice Mayor Dixon said when she had her one-on-one interview, she didn't give any names to Dr. Shanks but did contact staff because the Council wasn't told who was going to be interviewed; that was why the School Board's names were given to staff.

Councilmember Polanski said she also didn't share any names with Dr. Shanks as well; everything was through staff. Councilmember Polanski further stated she appreciated the efforts of the steering committee and was pleased some other members of the public were being added. Councilmember Polanski said she also appreciated the process and the work of the CAC, how everyone was very open at the public meeting, how they shared information, and was pleased with the survey and how the process has been to date.

Councilmember Livengood inquired how the 1,184 households would be selected. Dr. Shanks described how a list of all households would be used and how they would be selected at random to end up with 1,184. Dr. Shanks said the survey should be very reflective of the demographics of Milpitas; if it was found not to be reflective, there were some techniques that could be used to supplement.

Councilmember Livengood commented that the issue of who is going to say something is an ethics violation was an important issue (what he called the "says who" question) because if it is perceived as a political body in any way, then whatever they come up with will be perceived as political and inquired how that would be addressed. Dr. Shanks responded that usually a community figures that out; the code itself would be a set of general statements; the training would involve the Council sitting down and sharing the drafts of what it looks like (what does this look like in your job; what does it look like for the commission, the departments, and City Manager) but really the community will determine what it looks like to be ethical.

Councilmember Livengood said he thought it was a good survey and inquired if people should be asked who they think should be the arbitrator? Dr. Shanks responded the whole question of accountability was something we will have to spend some time talking about; most people who get the survey wouldn't have the background they need to answer the question; it was the City Council that ultimately decides if there is going to be accountability and who decides; so after a lot of input, we will lay before the Council what seems to be everyone's best idea how to do accountability; the answer was complicated and he didn't know if an arbitrator was needed; and he thought a better way to do it was after the election, get everybody back in the room and have a conversation on "what kind of campaign did you run." Councilmember Livengood expressed concern that if you create a code and if somebody who feels they have been wronged looks for relief, the first thing they ask is "where do I go to right this wrong"; if

there is no place to go, you've created an empty vessel, and this was something he thought should be looked at.

Councilmember Livengood called attention to question 14 that dealt with limiting campaign spending and asked if this question meant spending too much money was unethical? Dr. Shanks responded many people are concerned about the rising cost of running campaigns; sometimes it might exclude people who might not run; and some cities have responded to that by putting limits. Councilmember Livengood said generally speaking, this was a good survey and he was looking forward to seeing the results; he asked that when the results are presented that they also include the demographics.

Mayor Esteves said he was very pleased with the project because Milpitas is a very progressive city. Mayor Esteves asked in terms of schedule, was it the plan to have this in place for the November election. Dr. Shanks responded yes, they thought that was manageable. Mayor Esteves commented that the question concerning campaign limits may not be an issue but he was glad it was included because he wanted to hear from the public and he was looking forward to ethical guidelines for everybody.

Dr. Shanks commented that if any of the Council had names of people to be interviewed one-on-one, he would be happy to do that.

Vice Mayor Dixon thanked Dr. Shanks, she personally thought this was long overdue commenting that we just came through one of the nastiest campaigns she had seen in awhile. Vice Mayor Dixon said that speaking for herself, she didn't put that much money into her campaigns, she believed you have to stand on your record and go out and talk to the community; she was particularly concerned about the educational portion and thought the survey was so detailed that there should be good feedback. Vice Mayor Dixon further stated on the issue of having a review board, she was very leery of that because of what happened in the last election; she thought this was very brave coming right after the recent election to go out into the community and expose ourselves to the community but believed it was because we care so much about our community that we open ourselves up to criticism. Dr. Shanks commented that the leadership of a program like this was very important, and he commended the Council and also the staff and people working on this.

MOTION to approve the draft ethics survey with the additional question and random process, including providing information on the demographics with the survey results.

M/S: Polanski, Gomez.

Ayes: 5

BIDS & CONTRACTS

7. City Manager Agreement

City Attorney Steve Mattas reported the item before the Council was consideration of Amendment No. 3 to the employment agreement with the City Manager; the Council was provided with a copy of the staff report and the draft agreement, and advised that he and Councilmember Polanski served as the City's negotiators regarding this issue. Mr. Mattas summarized the contract would be for a two-year term (January 1, 2004, through December 31, 2005); it included a provision for an evaluation in November or December each year and at any other time the Council deems appropriate; provides for an increase in administrative leave from seven days to 14 days per year; provides a 12.8 percent increase in compensation to \$203,353 effective January 1, 2004; and obligates the City Manager to make a minimum employee payment contribution back to the City of five percent of his salary for the two year contract period and if the employee groups contribute a greater percentage, the City Manager would be obligated to match that percentage. Mr. Mattas explained the net effect of the increase was a net increase to \$193,185 per year, a 7.2 percent increase, and annualized after the employee contribution of about 2.05 percent per year since the last increase (before the employee contribution about 3.66 percent per year); and for calendar year 2005, the contract would be modified up to a maximum of \$7,000 if the Police Chief's compensation was

increased. Mr. Mattas said the Council had before them a resolution and Amendment No. 3 for approval.

Councilmember Polanski commented that she was beginning her 21st year as an elected official, this has been quite a long process but she wanted to state that the meetings she and the City Attorney had with the City Manager were all very professional, Mr. Wilson is probably the second professional she has worked with at this level, the only other person that came to mind was Dr. Charles Perotti, and not only was Mr. Wilson very professional in the negotiations, but he was also looking out for the best interest of the community and the City and for that she wanted to thank Mr. Wilson. Councilmember Polanski said it's not fun to negotiate but Mr. Wilson was very professional and she appreciated that and was recommending this to the Council. Councilmember Polanski further stated in the last year as she worked with Mr. Wilson and the entire City staff, she was amazed by what we have been able to accomplish; when you look at the quality of life we are still able to maintain for our citizens, everyone should be proud of what we have been able to accomplish; and she wanted to say as one Councilmember, she believed this was fair, equitable compensation for someone whom she believed has been looking out for the City. Councilmember Polanski thanked Mr. Wilson and all the professional staff for their work.

Mayor Esteves said he was pleased with what had been accomplished under Mr. Wilson's leadership and that of the Council and was comfortable with the proposal. Mayor Esteves further stated he wanted to make everyone aware that this was a great gesture of being open-minded in terms of the economic situation we have right now; he was happy with the performance and accomplishments as a City and a major part of that was due to the leadership of Mr. Wilson.

Vice Mayor Dixon commented that this had been a long drawn out process, she had prepared some comments, and asked everyone's indulgence while she read her comments. Vice Mayor Dixon began her comments by stating as second in seniority on this Council and six years on the Planning Commission, she has had a working relationship with four City Managers and two Interim City Managers; one of the Chief Administrator's most important roles was to provide their best professional recommendations and sometimes the recommendations create friction with some elected officials and are interpreted as uncompromising rather than professional responsibility. Vice Mayor Dixon said elected officials should keep in mind that conflict is a normal, healthy part of the public process and can help focus issues and surface additional options; however, encouraging recommendations from the top administrator does not mean that elected officials have to follow them. Vice Mayor Dixon commented on the controversial hiring on a 3 to 2 vote of a City Manager in 1996 that caused the city organization a great deal of pain during the four years leading up to the abrupt termination, which was also costly to the taxpayers. Vice Mayor Dixon said she brought up this past history to illustrate her understanding of what constitutes a good, capable administrator over one that is middle of the road or a poor performer; another issue troubling her was that there is no accepted standard of review used in evaluating the top administrator or the attorney; and she felt this was partly responsible for the current path that began three years ago.

Vice Mayor Dixon pointed out that Mr. Wilson was the only City employee, including this Council, to receive no new compensation in over three years; the compromised reached tonight of 12.8 percent was for a minimum 3 ½ year period (July 2001 through December 2004); annualized, the increase is 3.66 percent per year; with the non-reimbursed five percent employee contribution of \$10,168, it brought the City Manager's net salary increase annualized over the 3 ½ years to a 2.05 percent increase in compensation and placing the City Manager's net annual salary \$1,832 above that of the highest paid employee.

Vice Mayor Dixon said the facts that helped her in assessing the top administrator were his creating and expressing a vision for the organization; his knowledge about key issues important to the Council; his keeping informed about the latest technological, legislative, and political developments affecting the City; his expressed views and perspective to the Council on controversial issues; providing professional staff recommendations on most issues; sticking

to a professional position when warranted despite political pressure; making sure Council policy and direction is implemented after a decision; responding to citizen complaints in a timely manner, even answering his own phone; providing early warning to the Council on future and present financial problems; and development of a management team that, for the most part, is decisive and responsive. Vice Mayor Dixon pointed out that one of the main reasons Mr. Wilson was hired had to do with the number of top management that had left the city in the midst of building City Hall; not only did Mr. Wilson take on this major responsibility, he put together a team to finish this building and that success was continuing with the same team for the library and future renovation of the old library for a senior center.

Vice Mayor Dixon said she felt Mr. Wilson has demonstrated a clear vision on economic development as evidenced by the expansion of the Redevelopment project area; as a result of this added revenue ability, the Council was able to stop the expansion of the Elmwood prison by purchasing the remainder of the land; and all this has put Milpitas in an enviable position economically compared to other cities in the Bay Area. Vice Mayor Dixon further stated that she evaluated Mr. Wilson on his activity and visibility in the community and felt that he has attended more events than some members of the Council. Vice Mayor Dixon apologized for her lengthy statements but commented that it was a reflection of the frustration she had experienced over the past three years; she felt it was critical to provide direct, honest feedback to administrators regarding performance and perceptions and not let grievances fester. Vice Mayor Dixon stated she believed Mr. Wilson has the integrity and knowledge to guide this excellent city organization through what lies ahead for every California city and county.

Councilmember Gomez said he voted against a raise for himself and so was not going to vote for the CEO of our city to get a raise when most CEOs across the country are taking pay cuts; he thought \$180,000 a year plus a housing allowance was enough.

Councilmember Livengood said he didn't think there was any secret about his feelings about Mr. Wilson; when he first got here, Councilmember Livengood supported giving him a 9 percent raise; statements had been made we need to catch up for years when he didn't get a raise, but he didn't get a raise for a reason because there were City Councils elected that decided not to give him a raise. Councilmember Livengood further stated he didn't think it was legitimate to say we're going to give him 12 percent because he didn't get raises back in this or that year; he didn't get raises because there were reasons for it and he couldn't talk about a lot of those reasons because they are personnel related and covered under executive session privilege, so he couldn't talk about them and wouldn't violate that privilege. Councilmember Livengood said he could tell you about the professionalism everybody likes to tout about Mr. Wilson and suggested asking the firefighter who was standing out front of City Hall when it was at the Mall trying to do his job when Mr. Wilson screamed at him with a crowd of about 10 or 20 people around; ask him if he thinks the City Manager is professional. Councilmember Livengood stated he was not voting to give Tom Wilson any more money; there are a lot of problems at City Hall; he wasn't going to cover them up or sweep them under the carpet; he has a good salary and housing allowance he never likes to talk about, so he was voting no.

Mayor Esteves commented that the proposed adjustments were really making the pay fair and equitable with all the other employees; he didn't see any problems inside City Hall; he hadn't seen any morale problems or turnover, which was a big indicator of morale problems. Mayor Esteves said in the previous years, employees received the highest increases and at the same time we have been able to avoid layoffs and protect City services; and we are really an enviable city. Mayor Esteves said he was not here to rock the boat for any political reason, he was here to work, and praised and recognized the work of City employees who are doing their jobs under the leadership of Mr. Wilson. Mayor Esteves further stated he thought this was just a fair adjustment for the big invaluable accomplishments the City was enjoying.

Vice Mayor Dixon said she wanted to correct the record regarding Councilmember Gomez's statement that he didn't vote for a pay increase for himself and read the motion from the March 18, 2003, Council minutes to reduce Councilmembers' and the Mayor's discretionary

budgets to \$1,000 for Councilmembers and \$2,000 for the Mayor and to wait until the employee groups presented their proposals for cutting salaries before making any adjustments to Council salaries, approved on a 5/0 vote.

Councilmember Polanski said she believed it was brought up there was a reason the City Manager hadn't received raises in the last three years because the Council had done that; it was also stated that there was a housing allowance which, she believed, was approved by the City Council as part of the package when the Council hired him in order to bring him here; the housing allowance was something agreed to and should stand; and she didn't think there was an organization she had every been involved with or worked for where there wasn't some discontent or unrest or employee problems no matter what level; if there ever was an organization that was completely void of conflict, they would be making billions of dollars trying to sell it to the rest of us; she didn't look at this as compensating for the years the City Manager did not receive compensation; she believed the Chief Executive Officer should be compensated fairly and that the package that had been negotiated was fair compensation.

MOTION to adopt Resolution No. 7388 approving Amendment No. 3 to the Employment Agreement between the City and Thomas J. Wilson.

M/S: Polanski, Dixon.

Ayes: 3

Noes: 2 (Gomez, Livengood)

ADJOURNMENT

There being no further Council business, Mayor Esteves adjourned the City Council meeting at 9:11 p.m.

Gail Blalock, CMC
City Clerk

The foregoing minutes were approved by the City Council as submitted on March 16, 2004.

Gail Blalock, City Clerk

Date

APPROVED MINUTES
CITY OF MILPITAS

Minutes:	Regular Meeting of Milpitas City Council (Including Joint Meeting with Redevelopment Agency)
Date of Meeting:	February 17, 2004
Time of Meeting:	6:00 p.m. (Closed Session) 7:00 p.m. (Regular Session)
Place of Meeting:	City Hall Council Chambers, 455 E. Calaveras Blvd.

ROLL CALL

Mayor Esteves called to order the regular meeting of the Milpitas City Council at 6:00 p.m. Present were Mayor Esteves, Vice Mayor Dixon (arrived 6:01 p.m.), and Councilmembers Gomez and Polanski. Councilmember Livengood arrived at 6:30 p.m.

CLOSED SESSION

Mayor Esteves publicly stated the Council would convene in Closed Session to discuss the following four items listed on the agenda:

- 1. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**
(Pursuant to Government Code Section 54956.9[a])
Title: Milpitas v. Turner Construction et al.
Santa Clara County Superior Court Case No. CV008400
- 2. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**
(Pursuant to Government Code Section 54956.9[a])
Title: Milpitas v. Sobek
Santa Clara County Superior Court Case No. CV816141
- 3. CONFERENCE WITH REAL PROPERTY NEGOTIATOR**
(Pursuant to Government Code Section 54956.8)
Property: APN Nos. 86-12-015, 86-12-016, and 86-12-020. 112 N. Main Street
Negotiating Party: Milpitas Redevelopment Agency
Under Negotiation: Terms and Conditions for Acquisition of Property
- 4. CONFERENCE WITH REAL PROPERTY NEGOTIATOR**
(Pursuant to Government Code Section 54956.8)
Property: APN Nos. 28-24-015, 28-24-014, 28-24-020, and 28-24-026. 130, 110, and 94 Winsor
Negotiating Party: Milpitas Redevelopment Agency
Under Negotiation: Terms and Conditions for Acquisition of Property

Mayor Esteves adjourned the meeting to closed session at 6:01 p.m.

The City Council meeting reconvened at 7:03 p.m. with Mayor Esteves presiding and Vice Mayor Dixon and Councilmembers Gomez and Polanski present. Councilmember Livengood left the meeting.

**CLOSED SESSION
ANNOUNCEMENTS**

Mayor Esteves announced that for items 1, 2, and 4 on the Closed Session agenda, staff had been given direction and there were no announcements; for item 3, the City Attorney would make an announcement. City Attorney Steve Mattas reported with respect to item 3, the Abel property, the Council authorized staff to make an offer to purchase on a 4/1 vote, with Councilmember Livengood voting no. Mr. Mattas emphasized that the only authority given was to make the offer.

Mayor Esteves announced that Councilmember Livengood received an emergency call and had to leave.

PLEDGE

Members of Troop No. 92 led the Council and audience in the Pledge of Allegiance.

MINUTES

MOTION to approve the City Council minutes of February 3, 2004, including joint meeting with the Redevelopment Agency, as submitted.

M/S: Gomez, Polanski

Ayes: 4

Absent: 1 (Livengood)

SCHEDULE

Councilmember Polanski announced the Community Advisory Commission would be holding a special meeting tomorrow evening, February 18, at 7:00 p.m. in the Committee Room, to meet with Dr. Shanks, the ethics consultant retained by the City, and the public was invited to attend.

MOTION to approve the Schedule of Meetings as amended.

M/S: Gomez, Polanski.

Ayes: 4

Absent: 1 (Livengood)

PRESENTATIONS

Mayor Esteves said this was a very special night because the Council was honoring City employees with the Gene Schwab Award. Mayor Esteves recognized Gene's brother Harold, and his wife, Louise, who attended the Rotary luncheon presentation of the Award, and recognized the nominees who were present in the audience. Mayor Esteves read the proclamation recognizing Lechi Nguyen as the recipient of the Gene Schwab Memorial "Service Above Self" Award and presented it to Ms. Nguyen, thanking her for her services and stating that the City was proud of her.

Ms. Nguyen thanked everyone for coming to show support of her; stated many seniors advised her they wished to come to the meeting, but because of their age, she told them to stay home and watch TV instead but that she appreciated their thoughts; it was truly an honor to receive the Gene Schwab Award; expressed her sincere gratitude to everyone she worked with that helped her complete her job successfully; she tried to form a network system in order to bring the benefits effectively to seniors; and wanted to send a message to the residents that the City and County really cared about senior benefit priorities. Ms. Nguyen was presented with many bouquets of flowers from members of the Senior Center.

Celia Salazar, President of the Rotary Club, presented Ms. Nguyen with the Service Above Self plaque on behalf of the Milpitas Rotary Club and presented the Mayor and Ms. Nguyen with the perpetual plaque that would be displayed at City Hall. Mayor Esteves invited Supervisor McHugh to the podium. Supervisor Pete McHugh said as a member of the Milpitas Rotary, he knew Gene Schwab and worked with him, and as a representative of Santa Clara County, he was pleased to express appreciation to Ms. Nguyen for her service to the people of Milpitas.

CITIZENS FORUM

Mayor Esteves invited members of the audience to address the Council on any subject not on the agenda, requesting that remarks, including any visual or technology-assisted presentations of any kind, be limited to two minutes or less, and noted that the City Clerk would be using the timer and when the red light at the podium came on, two minutes would be up.

Mr. Swanson commented on the wonders of the place value system.

Rekha, on behalf of the Art of Living Foundation, invited everyone to a Concert for World Peace on March 7, 5-7 pm, at the Community Center.

William Connor said Milpitas is beautiful, he wanted to keep it that way, and suggested that the City keep it that way by purchasing the property in the Town Center where 65 housing units and a Safeway were proposed to be built.

Isaac Hughes commented he hoped that if a City newsletter was approved, it wouldn't contain advertisements; only wanted to see what was necessary for the citizens to enjoy the services provided by the City; and requested information on how many of the Milpitas History Books had been sold.

ANNOUNCEMENTS

Councilmember Polanski reminded everyone to vote on March 2, 2004, and to consider voting "yes" on Measure B for the library; reported she attended the DARE Graduation at Spangler on January 22 and at Curtner on January 27 and the officers did an excellent job; she had received inquiries as to when a public hearing would be held regarding ideas for honoring Dr. Martin Luther King, Jr. and Cesar Chavez and hoped that it would be noticed, especially for Commissioners as to when that date would be for the subcommittee to solicit public input.

Vice Mayor Dixon reported she, Recreation Services Manager Bonnie Greiner, and Ms. Greiner's staff had the opportunity to meet with Milpitas Unified School District trustees and staff to hear and participate in the interviews with the four selected Child Education Specialists; the Council had given direction to look into a pilot program for pre-kindergarten; a final report would be coming to the Council and the School Board but the next step would be to take it to the City/School Communication meeting. Vice Mayor Dixon further reported on February 5, the VTA Board met formally and listened to public input as to whether the Board should vote to forge ahead with the preliminary engineering studies for BART to Santa Clara County; after much discussion, the vote was 10/2 in favor of going ahead with those preliminary studies; and thanked Milpitas High School's Rosemary Keith and her staff and volunteers for a very successful Milpitas High School Academy auction and dinner on February 6.

Mayor Esteves said he was happy to attend the VTA Board meeting to advocate for the BART preliminary engineering studies and congratulated the VTA Board for making a great decision. Mayor Esteves congratulated Cub Scouts from Troop 92 who just received their Arrow of Light at the recent Blue and Gold Dinner.

Councilmember Gomez said he wanted to update everyone on the Martin Luther King /Cesar Chavez Recognition Subcommittee he and Councilmember Livengood were recently appointed to stating that they were in the process of asking people to be a part of that subcommittee, and anyone interested should email or call him.

AGENDA

MOTION to approve the agenda as submitted.

M/S: Gomez, Polanski. Ayes: 4 Absent: 1 (Livengood)

CONSENT CALENDAR

Mayor Esteves inquired if anyone wished to make any changes to the Consent Calendar. A member of the audience said it was his understanding that item 9 would be removed. City Manager Thomas Wilson requested item 9 (Grant Award Berryessa Creek Trail, Reach 3) be removed. Councilmember Polanski asked that item 3 (Sister Cities MOU) be removed.

MOTION to approve the Consent Calendar, items with asterisks on the agenda, as amended by the removal of items 3 and 9, in accordance with the staff recommendations.

M/S: Gomez, Polanski. Ayes: 4 Absent: 1 (Livengood)

*1. Appointment

Approved the Mayor's appointment to the Parks, Recreation, and Cultural Resources Commission of Kathryn Gray to the Alternate No. 2 position with a term expiring June 2004, and moving the following:

- * Henry Ku from Alternate No. 1 to fill the vacancy created by the resignation of Zeya Mohsin, for a term expiring June 2006
- * Judi Leonard from Alternate No. 2 to Alternate No. 1, with a term expiring June 2005

*6. Youth Sports Grant

Approved one Organizational Youth Sports Assistance grant in the amount of \$730.00 to Southpawprep as recommended by the Parks, Recreation and Cultural Resources Commission, leaving a balance of \$1,320.00 for the remainder of the Fiscal Year.

*7. Marquee Request

Denied Felipe and Vitalina Cardenas' request to use the Marquee to advertise a family event.

PROGRAM/COST PLAN

by the Library Subcommittee, various staff members as well as community input received through the process, expressed appreciation to the consultant team Cynthia Ripley and Martin Gordon who were present, and thanked the members of the County Library system, noting that Melinda Cervantes, Linda Arbaugh, and Sara Flowers were present in the audience. Mr. Armendariz introduced Mark Rogge who would make the presentation.

Capital Improvement Program Manager Mark Rogge outlined his presentation stating that it would cover the needs assessment, the site location, the building size and layout, the cost plan, and would conclude with the recommendations previously approved by the Subcommittee that were before the Council tonight.

Mr. Rogge reviewed highlights of the needs assessment noting that 70 percent of residents visit the library each year, it is the most visited public building in Milpitas, and is the busiest in the County Library system with approximately 2,200 patrons/day. Mr. Rogge commented on the deficiencies of the existing library designed for 100,000 volumes but currently has over 230,000 volumes. Mr. Rogge reported the Library Building Program transformed the Needs Assessment into a Building Program incorporating the services desired by the community, how best to configure the area to serve the needs of the community, and serve a high volume of traffic for many years. Mr. Rogge described the proposed site location in the MidTown area and the proposal to build a two-story 60,000 sq. ft. building that includes restoration of the existing building and new building construction that would seamlessly incorporate the existing building while preserving and honoring its historic character.

Mr. Rogge reviewed the Cost Plan that had been prepared without the benefit of plans and specifications. Mr. Rogge further reviewed the funding for the Library and Senior Center buildings, MidTown parking, and street improvements that totaled \$88.6 million. Mr. Rogge reported the Cost Plan for the Library Building totaled \$39 million, related costs (land acquisition and soil contingency, MidTown parking garage, utility undergrounding and relocation, street improvements and streetscape near the Library, and relocation of the Public Works Corporation Yard) totaled \$24 million, for a grand total Library and related MidTown Project costs of \$63 million. Mr. Rogge reviewed the recommendation to approve the Library Building Program, note receipt and file the associated projected Cost Plan, and direct staff to proceed with the design architecture selection process.

Mayor Esteves, as the Chair of the Library Subcommittee, said he would like to comment on three things: (1) the building would be considered a green building and environmentally very favorable; (2) the building library program would be a fulfillment of the needs assessment study which was the result of community input on requirements and needs; and (3) the Cost Plan was just a beginning plan and not a final figure. Mayor Esteves emphasized that this was just the beginning of the whole process.

Vice Mayor Dixon said it was *deja vu* but she agreed with everything; when the \$24 million was used as a page holder for this particular building, that was not the set budget; when you take into account the trouble encountered with this building, \$34.8 million was really a bargain; and no cost ever remains the same and every year will bring increases because we are living in this valley. Vice Mayor Dixon asked for clarification that the \$63 million didn't include the parking structure. City Manager Thomas Wilson responded that the \$39 million included the library and the \$24 million included the parking structure and the other items allocated to the project. Mr. Wilson explained the other items that were earlier allocated to this project were the TOT and the Library Capital Project Reserve; those items were designated prior to the Redevelopment reorganization. Vice Mayor Dixon inquired if the \$5 million she recalled from two years ago was not Redevelopment money. Mr. Wilson responded it came out of the General Fund capital reserves and at the time it was allocated to the project, the Redevelopment Agency had not been amended and bonds had not been sold; the Vice Mayor's comment that this program does not need to utilize those dollars was correct; staff wanted to make sure the full funding menu was presented to the Council and as this project proceeds, the Council will be asked to make and designate and dedicate funding

specifically to the project. Mr. Wilson explained there were two parts to the funding; \$80 million was available from the RDA and \$5 million from the General Fund capital reserve.

Vice Mayor Dixon said that with respect to the comments about a green building, she hoped that everything learned with the City Hall building would put the library building ahead of the game. Mr. Armendariz responded that all the lessons learned with City Hall would be applied to the library.

Vice Mayor Dixon questioned if the parking garage would only be two levels. Mr. Armendariz said it would be three levels, however, the parking garage in relation to the historic building would be slightly less in height. Vice Mayor Dixon expressed two concerns, that the structure would allow an additional level in the future if needed and, unlike the parking structure at the Great Mall, that it be built to code and will accommodate emergency vehicles. Vice Mayor Dixon commented that she thought this project was almost ahead of the game since there already was a very competent team under the leadership of the City Manager and thanked the Mayor, who had never missed a Subcommittee meeting, for his work. Vice Mayor Dixon also expressed appreciation to Greg Armendariz and Mark Rogge for coming up with the idea to switch the locations of the Senior Center and the Library.

Councilmember Polanski said she wanted to make it clear that the Library was something the community needed and wanted but Redevelopment funds could not help take care of the maintenance and operation of the building; she hoped the Council would be getting recommendations of other funding sources, such as the TOT, for the long term.

Councilmember Gomez asked for clarification of the staffing level and that the design of the building would be such that it wouldn't need many employees. Mr. Armendariz explained that the building would be designed with openness and a good line of sight recognizing that the Library system doesn't have the ability to fund additional personnel at this time. City Manager Wilson added that the assessment of the ultimate staffing will have to occur at the time the final design is made; the City may want to supplement the staffing; staff was also proposing to come to the Council with a funding plan for operation and maintenance beyond the level the JPA can.

Mayor Esteves said he was very excited about this project for the City and inquired about the next step in the process. Mr. Rogge responded staff would be bringing the RFP to the Subcommittee and beginning the process to select an architect; after approval by the Subcommittee, the contract would be brought to the Council for approval.

Mayor Esteves invited comments from the audience.

Ed Connor said one of the best libraries in the area was in San Francisco and was six stories with the entire building inside done with glass. Mr. Connor said he was not in favor of building the Library in this location because of the problems with the City Hall building costing \$10 million in extra costs for the cement under the building, and suggested there could be cost overruns.

MOTION to:

1. Approve the Milpitas Library Building Program;
2. Note, receipt and file the associated projected Cost Plan; and
3. Direct staff to proceed with the Design Architecture Selection Process.

M/S: Dixon, Gomez.

Ayes: 4

Absent: 1 (Livengood)

City Manager Wilson introduced Cynthia Ripley and Martin Gordon, present in the audience, and thanked them for their excellent work. Mayor Esteves recognized Library staff members who were in the audience and who had been a great part of the program.

***RA6.
INITIAL ACCEPTANCE
CITY HALL**

Adopted Resolution No. 7384 granting initial acceptance, subject to a one-year warranty period and reducing the faithful performance bond to \$42,795.90.

***RA7.
CONSULTANT SERVICES
PUBLIC IMPROVEMENT
DESIGN AGREEMENT
KB HOMES**

1. Authorized the City Manager to enter into the agreement with Swinerton Management in the amount not-to-exceed \$469,000, subject to approval as to form by the City Attorney; and
2. Authorized the City Manager to enter into an agreement with KB Homes to finance the management and design of the streetscape improvements for Abel Street between Corning and Great Mall Parkway.

**RA8.
ADJOURNMENT**

There being no further Redevelopment Agency business, Mayor Esteves adjourned the Redevelopment Agency meeting at 8:41 p.m.

The City Council meeting continued.

REPORTS OF OFFICERS & BOARDS

**2.
City Newsletter**

City Manager Wilson reported this item was brought forward by Vice Mayor Dixon and was a proposal to establish a City newsletter for distribution to Milpitas residents such as many communities throughout the country use. Vice Mayor Dixon said she was asking the Council to consider publishing a City newsletter and passed out samples of other city newsletters, commenting that she particularly liked the format of the City of Folsom newsletter that she felt was very effective. Vice Mayor Dixon said she was proposing no advertising or personal ads in the newsletter, the Folsom newsletter used a three, four, or eight page full color format and was sent out bi-monthly, which she thought was quite ambitious. Vice Mayor Dixon proposed looking at publishing a newsletter four times a year to provide an opportunity for the City to put the good news out to the community and, hopefully, open up the door for more participation from the community. Vice Mayor Dixon suggested that the School District might be highlighted, this would be a way of putting the sound bites out that this is a great community, and would be a way to make the community feel more engaged, particularly right now because there are so many new residents.

Councilmember Gomez inquired if there was any potential for cost avoidance by eliminating any other things currently being sent out. Vice Mayor Dixon mentioned the Milpitas Connection that focused primarily on recreation programs; however, the newsletter would focus on whatever it was wanted to focus on. Councilmember Gomez said he was wondering what this could take the place of that money was already being spent on.

Vice Mayor Dixon commented that a few years ago, former Mayor Manayan asked the Council to approve \$11,000 for an ad in the Silicon Valley Business Inc. Magazine and while she voted for it at the time, she felt it did nothing for the residents that live in this city; this would be the first time a newsletter was put out and the cost could be shared with the Redevelopment Agency.

Assistant City Manager Blair King suggested one mailing sent out each year advertised the street sweeping schedule and was something that might be included in a newsletter. City Manager Wilson added that there were some annual mandated mailings that might also be included.

Mayor Esteves said he thought it would provide two-way information from the City, it might include surveys, could be used to recruit members for commissions, and it would be a very effective communication tool.

Councilmember Polanski said she agreed communication was a wonderful tool and a newsletter had been used very effectively by the School District to help the community understand what is going on. Councilmember Polanski further stated that we have been

celebrating what a great city we are and what great employees we have; when you look around us, other cities are laying off people and closing fire stations; sometimes we forget to let the public know how good we are doing and how staff has worked so hard to do so many cost savings; and this type of newsletter would allow us to keep the public informed about the library and senior center projects, street sweeping schedules, and would be an excellent tool to use to communicate to the community the good things being done. Councilmember Polanski said she thought it was an excellent idea and being able to share with the Redevelopment Agency was a very cost effective way to get information out.

MOTION to direct staff to go forward with the design and implementation of a four-color Milpitas newsletter to go out at least quarterly.

M/S: Dixon, Polanski.

Councilmember Polanski inquired how many pages. City Manager Wilson suggested authorizing 12 pages although 12 pages probably wouldn't be utilized every edition. Vice Mayor Dixon said different times of the year would dictate how much was done. City Manager Wilson said if 12 pages were authorized, that would give staff the ability to publish up to the 12 pages. Vice Mayor Dixon amended the motion to include up to 12 pages. Mayor Esteves inquired about the name of the newsletter. Vice Mayor Dixon said it would be called the "City of Milpitas Newsletter." Councilmember Polanski, the second to the motion, agreed with the additions.

VOTE ON MOTION to authorize a 12 page, four-color, City of Milpitas Newsletter:

Ayes: 4 Absent: 1 (Livengood)

City Manager Wilson said staff would bring back a budget allocation and service agreement for the Council's approval. Councilmember Gomez said since this would be coming back, he would like potential cost avoidance items identified.

**3.
Renew Sister City Relationship
Tsukuba City, Japan**

Public Information Specialist Leslie Stobbe introduced Sister Cities Commission Chair Debra Garcia stating that Ms. Garcia and five other Commission members were present in support of an extended sister city relationship with Tsukuba City, Japan through 2008. Chair Garcia introduced Sister Cities Commissioners Echo Arthur, Arlyn Swiger, Satnam Chahal, Linda Downey, and Roselda Mateo and reported that Tsukuba City merged with Milpitas' former sister city, Kukizaki, Japan last November. Ms. Garcia further reported that Milpitas previously had a seven year relationship with Kukizaki and at the time of the merger, Kukizaki had become part of Tsukuba City; a Memorandum of Understanding (MOU) had previously been drafted, which the Council approved on consent and sent to Tsukuba City for its approval; the recommended Memorandum of Understanding before the Council represented the changes that Tsukuba City made for cultural reasons to the MOU previously seen by the Council.

Councilmember Polanski called attention to item 5(A) in the recommended MOU that stated "the host city must bear the expenses for sight-seeing, domestic transportation to and from the airport, hotels, and planned activities during group activities" and expressed concern that if someone was not paying that close attention, Milpitas would be expected to pay for any expenses incurred to go to an event such as Great America. Ms. Garcia responded that had concerned her as well; the intent was (after several emails had gone back and forth between Tsukuba City and Milpitas) that it would be just the one event, similar to the barbecue Milpitas had previously hosted; rather than an outdoor type barbecue, Tsukuba City had done an indoor type event that was very similar. Ms. Garcia said the intent was that it be a similar type of hosted event for all of the participating members and the participants would cover the costs of any additional sightseeing; Tsukuba City had asked that Milpitas cover the costs of transporting the people from Tsukuba City from the airport to Milpitas and back, as they had done in the past for visiting students and adults from Milpitas.

Councilmember Polanski said when she read item 5(A), she didn't feel it was as clear as the staff report on what Milpitas was going to pay for. Ms. Garcia said she understood that and explained how the wording came about through a number of emails back and forth and through a number of translations. Ms. Garcia also pointed out that before each visit, the Commission goes through a process of approving every activity and bringing it to the Council for approval and would continue to do that for any future visits. Ms. Garcia said the Mayor of Tsukuba City sent back a copy of the MOU, which he had already signed, and while she understood Councilmember Polanski's concerns, she felt the intent was that it be just one City event. Councilmember Polanski said she understood the timing and difficulties and thought the cultural exchange was wonderful; however, she also felt that the MOU should be clear and if the intent was to host one event, then that was what it should state. Ms. Stobbe suggested that since Milpitas had three original copies signed by Mayor Fujisawa, one original signed copy could be returned to Tsukuba City with a cover letter from Mayor Esteves explaining Milpitas' understanding. Councilmember Polanski said that would be helpful for her but didn't know how the other members of the Council felt.

Mayor Esteves inquired about the budget of \$2,600. Ms. Garcia explained that was based on the cost of the most recent barbecue hosted by Milpitas two years ago, with an increase of 10% over the cost of what was a guesstimate and a cost of \$900 for the transportation to and from the airport for 12 people. Mayor Esteves asked if it was basically the budget for one event the City would host. Ms. Stobbe responded it included the cost of a Class B vehicle to transport people and luggage as well as a 10% increase in the estimated cost for the Friendship Party; it was a high-end estimate of what the Commission would bring to the Council to request funding when the Tsukuba City delegation comes to Milpitas.

Mayor Esteves asked if one visit a year for every sister city was expected. Ms. Stobbe responded yes adding that the Milpitas delegation would go to Tsukuba City and Tsukuba City would come to Milpitas once every year through 2008, and that was how it had been for the last seven years. Mayor Esteves inquired if the Commission was expecting to extend this kind of arrangement with the other sister cities. Ms. Garcia responded at this time, Dagupan, Philippines did not include a student visit; there was in the works a presentation for Huizhou City, China, and that MOU would include a student visit. Ms. Garcia explained that in working on the MOU with Dagupan City, it was pointed out that Milpitas did not have any budget. Mayor Esteves expressed concern that there was no parity and the relationships with sister cities weren't equitable. Mayor Esteves said when he visited Dagupan City, they shouldered all hotel charges, all their food, transportation to and from hotels, and all sightseeing. Ms. Garcia said there was some discussion going on now about a visit from Dagupan City coming up in the near future and Councilmember Livengood had volunteered on his own time to help recruit and get help from the business community to help fund events for any of the housing for future sister city events. Mayor Esteves said he didn't mind the source of the funds so long as there was a sense of equality.

Councilmember Polanski said it was her understanding (before she was on the Council), that when the Sister Cities Commission was formed and the sister city relationships were started, there was going to be a foundation or some organization that was going to be separate and would provide the funding as these relationships developed. Ms. Garcia said that was true, there was in the works a separate organization, there were two members right now who volunteered to be part of it because they did not want the Sister Cities Commission Members to be on the Board of that organization, so they were looking for a third so that organization could file for non-profit status and then take over the fund-raising. Councilmember Polanski said she thought there was going to be a point where, even with Tsukuba City or when it was Kukizaki, that there were going to be ways, through this non-profit or somehow else, to cover these costs because she thought we were trying to get away from the City spending money except for the Mayor presenting a gift. Ms. Garcia said that had been discussed a number of times at Commission meetings and Councilmember Livengood said that he did not feel it was appropriate for the Commission members to be doing that type of fund raising and he suggested that the Commission come to the Council and ask for the funds at this time while at

the same time recruiting members from the community to try to start up an organization to do just that.

Councilmember Polanski said from her own standpoint as one City Councilperson, the best group to raise the funds for a non-profit would be those who are members of the Sister Cities Commission because they are the most passionately involved in these relationships. Councilmember Polanski, referring to Ms. Garcia's earlier comment that Councilmember Livengood said he was willing to do something on his own time, said she was a Councilwoman 24/7 and didn't have a lot of free time because this was what we do, what they were elected to do and what they were here to do. Councilmember Polanski further stated she thought there might be some difference in philosophy and was something that may need to come back to the entire Council again and believed that those who are sitting on the Sister Cities Commission would probably be the most passionate to go out and start a foundation.

Vice Mayor Dixon said it appeared to her that there were two different issues; it had been quite a few years since the Council discussed the philosophy of the Sister City Program and there were some new Councilmembers since this first started. Vice Mayor Dixon further stated she would like to go forward with the MOU tonight but would also like to agendized on a future agenda a discussion of what the Mayor brought up as far as the parity because it was important to put some ground work together as to how we will treat each one of these cities. Vice Mayor Dixon asked that it come back to the Council later when staff has put a report together and asked that it be part of the motion.

Councilmember Polanski said she was in agreement to approve the recommendation to enter into the four-year sister city relationship with Tsukuba City and authorize the Mayor to sign the Memorandum of Understanding with a letter from the Mayor clarifying what that meant but not authorizing funds until staff can come back and see what parity would be and what the Council would be looking at. Councilmember Polanski asked when there would be a visit from Tsukuba City. Ms. Garcia responded that at this point in time, Milpitas students would be going to Tsukuba City the third week of June and students from Tsukuba City visiting Milpitas sometime in August. Councilmember Polanski suggested that this could be part of the budget process. City Manager Wilson responded that it could. Councilmember Polanski said she thought that would be most appropriate.

MOTION to approve the Sister Cities Commission's recommendation to enter into a four-year sister city relationship with Tsukuba City, Japan; authorize the Mayor to sign the Memorandum of Understanding with a clarifying letter; and the recommendation from the Commission for funding be part of the budget process for parity for all sister city relationships.

M/S: Polanski, Dixon.

Ayes: 4

Absent: 1 (Livengood)

UNFINISHED BUSINESS

4. Cable TV Franchise Renewal Update

Assistant City Manager Blair King presented an update on the Cable TV franchise renewal negotiations reporting on activities that had transpired since the Council authorized the commencement of the negotiations in January 2003. Mr. King commented that the negotiations were taking longer than originally anticipated and the franchise agreement had been extended from April 2003 to April 2004. Mr. King also noted that Eddie Garcia of Comcast had indicated he couldn't be present tonight.

Mr. King reviewed current franchise issues commenting on the inconsistencies found in the franchise fee desk audit, showed pictures of grounding and installation issues, and commented on performance issues. Mr. King reported there were also issues related to the current franchise agreement and staff was recommending that the Council direct staff to prepare a resolution finding the franchise holder in violation of the existing franchise agreement, the resolution would provide formal notice of violation to the franchise holder and provide an opportunity to cure, and failure to comply could result in penalties. Mr. King reviewed the

recommendation to receive the staff report and direct staff to prepare a resolution for subsequent Council consideration.

Councilmember Gomez asked with respect to the code issues that were presented to the Council the last time Comcast was considered if no progress had been made. Mr. King responded staff was not aware of any progress because there hadn't been any communication. Councilmember Gomez inquired how likely was it that audit fees would be recovered. Mr. King responded it would be in the context of a settlement agreement.

Vice Mayor Dixon said she was not pleased with this at all and not pleased that Comcast couldn't have a representative present; it was the Council's responsibility to speak on the residents' behalf; she wished the City could take a stronger stand and encouraged staff to push it.

Councilmember Polanski said she concurred and expressed concern that Mr. Garcia attended the prior Council meeting when this was discussed, said he was going to do all these things and nothing has changed. Councilmember Polanski further stated Comcast needed to know that the City was serious and needs to move forward.

Mayor Esteves inquired what would be expected after the Council adopts the resolution. Mr. King said Comcast would have a period to correct the problems and deficiencies and respond to the questions the City raised from the audit; if they do not, the next phase would accrue penalties.

Mayor Esteves said he thought the best option for now was the resolution to keep this moving.

MOTION to note receipt and file the staff report and direct staff to prepare a resolution for subsequent Council consideration to find Comcast in violation of the current franchise agreement.

M/S: Dixon, Polanski.

Ayes: 4

Absent: 1 (Livengood)

**5.
Odor Control Update**

Principal Civil Engineer Darryl Wong reviewed key items accomplished during the past month since the last odor control comprehensive action plan update. Mr. Wong reported on the preparation of a complaint guideline door hanger for distribution to residents, the Bay Area Air Quality Management District's coordination of Memorandums of Understandings with possible odor generators as part of the Rapid Notification System, and the review of professional odor control advisory services proposals. Mr. Wong commented that the number of odor incidents was down, which was promising, and noted that Bill Jones from BFI was present in the audience.

Vice Mayor Dixon expressed appreciation to Mr. Wong and Mr. Jones for their work.

MOTION to note receipt and file the progress report.

M/S: Dixon, Polanski.

Ayes: 4

Absent: 1 (Livengood)

ORDINANCES

**8.
Posted Use Regulations
At Designated Public Sites
(Introduce)**

City Attorney Steve Mattas reported Vice Mayor Dixon was requesting the Council consider adopting an ordinance allowing for enforcement of posted rules and regulations governing use of specified public facilities; the ordinance before the Council would authorize owners and operators of recreational facilities and athletic complexes to post signage outlining rules and regulations governing the use of the facilities and allow enforcement of the posted regulations in any public facility. Mr. Mattas explained that staff had received reports from the School District Maintenance Department that many of the District's playing fields and artificial field turf and track surfaces had been damaged by certain recreational activities. Mr. Mattas further explained that the ordinance would authorize the District to post signs outlining rules and

regulations for facility use and provided that violations of the posted regulations may be punishable as an infraction.

Vice Mayor Dixon noted that the District's Maintenance Director was in the audience and may like to comment. Vice Mayor Dixon commented that because Milpitas has the best fields within the region, people are coming into Milpitas using the fields for things like field hockey.

Keith Walker, MUSD Maintenance Director, commented that this was another example of the School District and the City working together, it would provide the police with what they need for enforcement, they want the public to have use of the fields but to use them properly, and he appreciated what the City was doing. Vice Mayor Dixon thanked Mr. Walker for bringing this to her attention.

Police Chief Charles Lawson said he was pleased with the ordinance, which would provide some teeth for enforcement.

Councilmember Polanski said she liked how the ordinance was being put forth in a broad sense so it could be used for other things that could come up in the future. Councilmember Polanski inquired if the Council moved forward with this, how soon could the District proceed with the signage. City Attorney Mattas responded if the ordinance was introduced this evening, it could be adopted in two weeks (at the next Council) meeting and would go into effect 30 days after adoption (total time of about six weeks).

Mayor Esteves inquired about the fines. Mr. Mattas responded \$100 for the first violation, \$200 for the second violation, and \$500 for the third and subsequent violation.

City Attorney Mattas read the title of Ordinance No. 261 adding a new Chapter 18 to Title V of the Milpitas Municipal Code to authorize enforcement of posted use regulations at designated public sites and facilities.

MOTION to waive the reading beyond the title and introduce Ordinance No. 261.

M/S: Polanski, Dixon.

Ayes: 4

Absent: 1 (Livengood)

RESOLUTIONS

9. Accept Grant Award Award Contract Berryessa Creek Trail

Capital Improvement Program Manager Mark Rogge reported this item was on a previous agenda; however, a bid protest was received and the item was continued; during that time staff met with both of the contractors; staff sent out a letter to the second low bidder (Grade Tech) informing them that staff did not find any reason to disqualify the low bidder; late today staff received a letter from Grade Tech and their attorney; staff did not find any additional information in that letter that would change the staff recommendation; and representatives of Grade Tech were in the audience and wished to speak.

City Attorney Steve Mattas stated that Grade Tech had submitted further correspondence at approximately 2:30 p.m. this afternoon; staff reviewed the material and did not believe the information provided constituted a basis for modifying the staff and City Attorney recommendation, which was to go forward with the award to the original contract recipients; and if the Grade Tech representative wished to speak, the Council may wish to let them speak now.

Matt Troughton, an attorney with the law firm Coudert Brothers, representing Grade Tech, Inc., said with him tonight was Eric Remson, from Grade Tech, Inc.; part of the package Mr. Mattas referred to was a declaration under oath by Mr. Remson putting together the correspondence and bid material that Grade Tech had access to and which formed the basis for the protest; the fundamental question before the Council tonight was whether a federally funded project where the City of Milpitas was accepting federal dollars and agreeing in exchange for those dollars to apply and enforce a Disadvantaged Business Enterprise outreach

program, whether the City would truly honor its commitments to the federal government and do that. Mr. Troughton further stated the apparent low bidder, Bugler Construction, had submitted a document as part of its bid package that said they had complied with the federal outreach goal for Disadvantaged Business Enterprises (DBE) and had met and surpassed the 14% goal set by the City, and in fact had achieved 16.2% DBE participation in the project; the problem was that they did not reach the goal; at best, they reached 11.2% of the goal; it came down to Bugler Construction over counting the dollars attributable to various subcontractors they proposed to use on the contract, including their trucking vendor; the invitation for bids propagated by the City expressly stated that if supplies are being bought from a subcontractor, every dollar of the supplies did not count towards the goal, only 60% could be counted; and making just that one adjustment to Bugler Construction's bid, they fell below the goal to underneath 14%, down around 13.2%.

Eric Ramson, Grade Tech Secretary/Treasurer, stated he was the person who had bid the job and was used to dealing with DBE participation and contracts; he went through and reviewed the information and felt Bugler presented absolutely no good faith effort at all; if Bugler did not meet the goal and did not meet the good faith effort, the bid should be thrown out; he did not think it would stand up under anybody else looking it over from a federal standpoint. Mr. Ramson pointed out that the City had in its own specs 23 pages of how to obey all these different guidelines, he did not understand if they didn't meet the goal and they didn't make the good faith documentation, how they could be awarded the project. Mr. Ramson said that was why he got an attorney involved, he had attended a meeting and shared his position and no one had told him he was incorrect in his interpretation.

City Attorney Steve Mattas said the Council should understand that the documents before the Council this evening included the staff report, the backup data that actually addresses the review the City staff did and his office did with regard to the compliance by Bugler with the DBE requirements; the Council should also be aware that the City did retain independent services with 4 Leaf, who reviewed the DBE requirements as well and also concluded that they've met the requirements as set forth in both the federal regulations and the City's bid application process. Mr. Mattas further stated the Council should also be aware that the requirements, although stated in the letter from the gentlemen from Coudert Brothers as being mandatory in all instances were not, in fact, mandatory – some of the language in the documents related to what they should do as opposed to what they shall do; of particular relevance to the Council's consideration tonight was that the data supplied to show good faith effort listed eight different criteria that a bidder should do if they're showing good faith when they can't meet the DBE goal; and, the data was provided by Bugler, both as part of their DBE compliance and after they were identified as being the apparent low bidder in the action. Mr. Mattas went on to explain how the review was made and how it was determined Bugler's average participation, in terms of DBE, was comparable to the average participation of all the other bidders. Mr. Mattas said he wanted to be real clear that it was not that they've complied with the 14 but that they have complied with the good faith effort requirements which were set forth under DBE regulations. Mr. Mattas stated it was still his opinion that it was appropriate for the Council to take the actions that have been recommended in the staff report this evening.

Mayor Esteves said the explanation was clear to him and he didn't have a problem with the staff recommendations.

Councilmember Polanski said she had confidence in our staff and the opinion of our Attorney and appreciated people coming down and taking the time, but she was comfortable with moving staff recommendations as listed to adopt the resolution, approve a budget appropriation, reject the bid protest, and waive minor irregularities – the four items.

City Attorney Mattas recommend that the Council take up the items one at a time.

MOTION to adopt Resolution No. 7385 demonstrating acceptance of the grant award from the Santa Clara Valley Water District.

M/S: Polanski, Dixon. Ayes: 4 Absent: 1 (Livengood)

MOTION to approve a budget appropriation of \$90,000.

M/S: Polanski, Dixon. Ayes: 4 Absent: 1 (Livengood)

MOTION to reject the bid protest received from the second low bidder, Grade Tech, Inc.

M/S: Polanski, Dixon. Ayes: 4 Absent: 1 (Livengood)

MOTION to waive minor irregularities in the bidder's documentation and award the construction contract for Berryessa Creek Trail, Reach 3 (Project No. 5074) to the lowest responsive bidder, Bugler Construction, in the amount of \$534,700.

M/S: Polanski, Dixon. Ayes: 4 Absent: 1 (Livengood)

ADJOURNMENT

There being no further Council business, Mayor Esteves adjourned the City Council meeting at 10:17 p.m.

Gail Blalock, CMC
City Clerk

**The foregoing minutes were approved by the City Council as submitted on
March 2, 2004.**

Gail Blalock, City Clerk

Date

APPROVED MINUTES
CITY OF MILPITAS

Minutes:	Regular/Special Meeting of Milpitas City Council (Including Joint Meeting with Redevelopment Agency)
Date of Meeting:	February 3, 2004
Time of Meeting:	4:30 p.m. (Closed Session) 7:00 p.m. (Regular Session)
Place of Meeting:	City Hall Council Chambers, 455 E. Calaveras Blvd.

ROLL CALL

Mayor Esteves called to order the regular and special meetings of the Milpitas City Council at 4:30 p.m. Present were Mayor Esteves, Vice Mayor Dixon, and Councilmember Polanski. Councilmember Livengood arrived at 4:35 p.m. and Councilmember Gomez arrived at 4:45 p.m.

CLOSED SESSION

Mayor Esteves publicly stated the Council would convene in Closed Session to discuss the following three items listed on the agenda:

1. **PUBLIC EMPLOYEE PERFORMANCE EVALUATION**
(Pursuant to Government Code Section 54957)
Title: City Manager
2. **CONFERENCE WITH LABOR NEGOTIATOR**
(Pursuant to Government Code Section 54957.6)
Unrepresented Employee: City Manager
3. **CONFERENCE WITH REAL PROPERTY NEGOTIATOR**
(Pursuant to Government Code Section 54956.8)
Property: APN Nos. 86-12-015, 86-12-016, and 86-12-020
Negotiating Party: Milpitas Redevelopment Agency
Under Negotiation: Terms and Conditions for Acquisition of Property

Mayor Esteves adjourned the meeting to closed session at 4:31 p.m.

The City Council meeting reconvened at 7:00 p.m. with Mayor Esteves presiding and Vice Mayor Dixon and Councilmembers Gomez, Livengood, and Polanski present.

**CLOSED SESSION
ANNOUNCEMENTS**

There were no Closed Session announcements.

PLEDGE

Members of Troop No. 92 led the Council and audience in the Pledge of Allegiance.

MINUTES

MOTION to approve the City Council minutes of January 20, 2004, including joint meeting with the Redevelopment Agency, as submitted.

M/S: Gomez, Polanski.

Ayes: 5

SCHEDULE

MOTION to approve the Schedule of Meetings for February 2004, as submitted.

M/S: Gomez, Polanski.

Ayes: 5

PRESENTATIONS

Mayor Esteves read a letter from Governor Schwarzenegger congratulating the City of Milpitas on the occasion of its 50th anniversary of incorporation. Mayor Esteves presented the letter to the City Clerk for the City's archives.

Mayor Esteves read a proclamation recognizing Cliff Williams for his contribution to the City as an original member of the Telecommunications Commission and as a member of the Planning Commission and presented it to Mr. Williams. Mr. Williams thanked the Councils,

present and past, which he tried to model after, and said he couldn't have served the community without the support of his wife, Gail, and daughter, Michelle, who joined him at the podium.

Vice Mayor Dixon commented that she had worked with Cliff for four years on the MidTown Specific Plan and appreciated his willingness to always think outside the box and because of that, many things that we thought we were not ready for are part of the MidTown Plan. Vice Mayor Dixon further commented that she understood that Mr. Williams was running for the Assembly and wished him luck. Mayor Esteves added his thanks stating that Mr. Williams was an exemplary leader.

Mayor Esteves read a proclamation recognizing February as "Black History Month" and presented it to representatives of the Sunnyhills neighborhood. One of the representatives thanked the Mayor and Council saying they were honored to receive this proclamation in honor of Dr. Martin Luther King.

CITIZENS FORUM

Mayor Esteves invited members of the audience to address the Council on any subject not on the agenda, requesting that remarks, including any visual or technology-assisted presentations of any kind, be limited to two minutes or less, and noted that the City Clerk would be using the timer and when the red light at the podium came on, two minutes would be up.

Mr. Swanson commented on the importance and worth of the place value system.

Lorraine Hepworth encouraged everyone to participate and support this year's American Cancer Society Relay for Life June 25-26 at the Sports Center, introduced Ingrid Dick from the American Cancer Society, and thanked the Council for its past and present support. Ingrid Dick also thanked the Council for its support on behalf of the many cancer patients in Santa Clara County who will directly benefit from the money raised. Mayor Esteves expressed his appreciation to Ms. Hepworth for again leading this year's Relay and encouraged everyone to participate.

Frank DeSmidt invited everyone to the Chamber's Crab Feed on February 27 at Napredak Hall and announced the second "Good Morning Milpitas Breakfast" on February 20 sponsored by the Chamber and featuring Ysabel Duron who would be speaking on "TV News, Politics, and You the Viewer."

Rob Means shared a resolution passed by the Duluth, Minnesota City Council supporting a proposal to locate PRT certification track in Duluth. Mr. Means said he was mentioning this because some people in Milpitas were concerned about this being experimental and Milpitas being too small, so he hoped Duluth, with a population of 90,000, would help alleviate those concerns.

Carmen Montano expressed concern that the Terrace Gardens Board of Directors advertised for two openings on the Board, received two applications, and considered the applications behind closed doors. Ms. Montano said she believed the Terrace Gardens Board was subject to the Brown Act and questioned why they were discussing the applications in private.

ANNOUNCEMENTS

Councilmember Polanski thanked everyone who attended the January 26th Celebration at City Hall, thanked the volunteer staff for all their help, especially Cindy Maxwell, the 50th Committee staff liaison; announced that the different activities can be viewed on the City's web site; and held up a copy of the Milpitas history book published in collaboration with the Milpitas Post, that covered five dynamic decades and was available for \$25 from the Information Desk at City Hall.

Vice Mayor Dixon requested a staff report within the next Council meeting cycle on the current status of the Los Esteros Peaker Power Plant located on the Milpitas boarder, particularly the landscaping issue. Vice Mayor Dixon reported that she attended first standing VTA Committee for Finance and Administration and commented that accusations made by a

Policy Advisory Committee member from the city of Mountain View were his own opinions, the VTA had responded along with a critical review by a well known transportation specialist, and a letter was also written by the VTA Chairman, Supervisor Don Gage but nothing had been seen in the newspaper yet. Vice Mayor Dixon further reported the upcoming VTA Board meeting on Thursday, February 5, 2004, would be a very important meeting, especially for the citizens of Milpitas, not only would the focus be on the 19 recommendations proposed by last year's Ad Hoc Financial Stability Committee but on the remainder of the year to identify further cuts and additional revenue streams; she would continue to represent the will of the voters in their support to bring BART to Santa Clara County. Vice Mayor Dixon further stated last week she had met with the Joint Powers Authority for the Santa Clara County Library System; the initial budget showed a potential \$600,000 deficit whether the March ballot measure to extend the current assessment passes or fails; the Authority decided not to wait until the State passed its budget and voted to eliminate an \$80,000 position for illiteracy advocate and more cuts were inevitably on the way. Vice Mayor Dixon said she had received a communication from the Milpitas Chamber of Commerce stating that the Chamber and the business community supported the County Libraries and Measure B, and she thanked the members of the Chamber present in the audience. Vice Mayor Dixon said she heard resident concerns of those who lived behind the Town Center Shopping complex regarding the proposed renovation plans being submitted by Shapell within the next month to the Planning Commission; Safeway representatives were a part of the presentation and offered to work with the residents.

Vice Mayor Dixon said she had the pleasure to represent the Council for the debut of "Good Morning Milpitas," which was a new venue the Chamber was producing; the first guest speaker was Supervisor McHugh, Milpitas' former Mayor, who delivered a dire financial outlook for the status of the County; and wished him well and the strength it would take as he tackled the many challenges to come this year as the Chair of the Board of Supervisors for 2004.

Vice Mayor Dixon represented the Council at the first ever Milpitas Unified School Band Festival, where over 567 students that filled the gym; felt the performance was outstanding; and acknowledged Superintendent Karl Black and many others for a job well done.

Councilmember Livengood, addressing Ms. Montano's comment regarding the selection of Terrace Gardens Board members, which he was not interested in getting involved in as it was a Terrace Gardens issue per se, said he felt they should choose the people they wanted but it seemed strange to him that Terrace Gardens would not be under the purview of the Brown Act. Councilmember Livengood requested a report back from the City Attorney as to whether or not Terrace Gardens is exempt from the Brown Act.

Councilmember Livengood congratulated all the people who were involved in the 50th Anniversary event.

Mayor Esteves thanked Councilmember Polanski and all those involved in the 50th Anniversary program; and he had received positive feedback from both within and without the City, which made him proud to be the Mayor of the City of Milpitas.

Mayor Esteves reported he participated in the celebration of the Milpitas Chinese School and thanked the Vietnamese community for allowing him to be part of the Vietnamese Spring Festival and Parade; and congratulated the cast and directors of "Hobbit."

Mayor Esteves requested staff provide a report on the City's building permit process, where the City is, how it is doing, how many applications are approved in one day, and about the on-line process.

Councilmember Polanski, addressing the Terrace Gardens Board of Directors and Councilmember Livengood's request of staff, stated the Board of Directors received a

rendering from an attorney on the Brown Act relative to the Terrace Gardens Board of Directors and the City Attorney might also like to receive that information.

AGENDA

City Attorney Steve Mattas asked that item 9 (Budget Appropriation and Construction Contract for Berryessa Creek Trail, Reach 3) be removed from the agenda; a bid protest had been filed and staff would like time to review the matter and report back at the next meeting.

MOTION to approve the agenda as amended by the removal of item 9.

M/S: Gomez, Livengood.

Ayes: 5

CONSENT CALENDAR

Mayor Esteves inquired if anyone wished to make any changes to the Consent Calendar.

MOTION to approve the Consent Calendar, items with asterisks on the agenda, as submitted in accordance with the staff recommendations.

M/S: Gomez, Polanski.

Ayes: 5

***2. Appointments**

Approved the Mayor's appointments and reappointment as follows:

Community Advisory Commission

- Reappoint Sudhir Mandal to a new four-year term expiring January 2008;
- Appoint Craig Ranker (from Alternate 1) to a regular position for a term expiring January 2008 (resignation of Al Garcia);
- Appoint Chris Lee (from Alternate 2) to a regular position for a term expiring January 2008 (Guadalupe Ortiz, Jr. term expiration);
- Appoint Nestor Luna (from Alternate 3) to a regular position for a term expiring January 2006 (Sam Robinson resignation);
- Move Jenifer Lind from Alternate 4 to Alternate 1 (term expiring January 2005);
- Appoint Danny Fang to Alternate 2 (term expiring January 2006); and
- Appoint Michael Queenan to Alternate 3 (term expiring January 2006).

Sister Cities Commission

- Appoint Linda Downey (from Alternate 1) to a regular position for a term expiring September 2004 (resignation of Jenifer Lind)
- Move Roselda Mateo from Alternate 2 to Alternate 1 (term expiring September 2004); and
- Appoint Massoud Arefi to Alternate 2 (term expiring September 2005).

***4. Family Child Care Assistance Fund**

Approved the proposed changes to the Family Child Care Assistance Fund policies and procedures to be effective July 1, 2004.

***5. Wireless Technology (Public Safety)**

Authorized the City Manager to execute an agreement with Tropos Networks, Inc. for a grant of equipment and services as part of a demonstration program for wireless technology in Public Safety, subject to approval as to form by the City Attorney.

***6. Santa Clara County Partnership for School Readiness**

Approved request of \$1,000.00 from the Council's Community Promotions Budget to fund the Santa Clara County Partnership for School Readiness' request to support the Santa Clara County Kindergarten School Readiness Assessment Project.

***7. Marquee Request**

Approved Annell Spencer's request to use marquee (February 4th - 14th) to display the following: "Milpitas Library, Book Sale, Romance & Computer, Feb 14th 10am-4pm."

***8. N. McCarthy Boulevard**

Adopted Resolution No. 7383 summarily vacating 7 feet of landscape and sidewalk easement along a portion of N. McCarthy Boulevard (Project No. 3030).

(Project No. 3030)

- ~~*9. _____ 1. _____ Approved a budget appropriation of \$90,000 from the Park Fund.~~
~~Berryessa Creek Trail, _____ 2. _____ Awarded construction contract for Berryessa Creek Trail, Reach 3 (Project No.~~
~~Reach 3 (Project No. 5074) _____ 5074) to Bugler Construction, conditioned upon Staff confirming that Bugler~~
~~Construction has met the federally mandated DBE requirements. If Bugler~~
~~Construction has not met the DBE requirements, the construction contract shall be~~
~~awarded to the next lowest responsive bidder who has met the DBE requirements, and~~
~~whose bid is below the project budget.~~

***10.** Approved the Permittee Dedication and Improvement Agreement with Edsel Court
Edsel Court Apartments Apartments (Project No. 2295) and authorized the City Manager to execute the same,
(Project No. 2295) subject to the approval as to form by the City Attorney.

***11.** Approved the following purchase requests:
Miscellaneous Vendors

1. \$5,538.65 to Stewart & Stevenson for emergency transmission repair and motor mount replacements on Fire Engine No. 3 for the Fleet Maintenance Division. (Funds are available from the Public Works Department operating budget for these services.)
2. \$17,244.80 to Target Specialty Products for the purchase of systemic insecticides to provide annual control of aphids on Modesto Ash and other susceptible street trees for the Tree and Landscape Maintenance Division. (Funds are available from the Public Works Department operating budget for this purchase.)
3. \$11,625.04 to National Energy Foundation for the purchase of water efficiency educational program material kits for teaching 5th grade students at five schools the water wise program for the Utility Engineering Division. (Funds are available from the Engineering Department operating budget for this purchase.)
4. \$5,000.00 to Alliance Occupational Medicine, Inc. to provide new hire medical exams and tests, vaccines, and minor medical needs of existing staff. (Funds are available from the Human Resources Department operating budget for these services.)
5. \$5,071.62 to Milpitas Printing for the printing of two sided, four color door hangers outlining the odor complaint process per the City's Odor Outreach Plan for the Utility Engineering Division. (Funds are available from the Engineering Department operating budget for this purchase.)

PUBLIC HEARINGS (NONE)

JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. Mayor Esteves called to order the regular meeting of the Milpitas Redevelopment Agency,
CALL TO ORDER meeting jointly with the City Council, at 7:40 p.m.

RA2. Present were Mayor Esteves, Vice Mayor Dixon, and Agency/Councilmembers Gomez,
ROLL CALL Livengood, and Polanski.

RA3. MOTION to approve the Redevelopment Agency minutes of January, 2004, including
MINUTES joint meeting with the City Council, as submitted.

M/S: Gomez, Livengood. Ayes: 5

RA4. MOTION to approve the Agenda and Consent Calendar as submitted.

AGENDA M/S: Gomez, Livengood. Ayes: 5

**RA5.
LIBRARY PROJECT UPDATE** Assistant City Engineer Greg Armendariz reported that several pre-design elements for the Library were underway and some design work was also currently underway for relocation of the Public Works Corporation Yard and undergrounding of utilities. Mr. Armendariz further reported that last week the subcommittee heard a presentation from the consultant architect on the final draft of the building program; the subcommittee directed that it be brought to the Council at the next Council meeting; also before the Council on February 17, 2004, will be a complete cost plan.

Vice Mayor Dixon said she wanted to make it clear to the public that the complete cost plan will include technology and furniture. Mr. Armendariz responded the Vice Mayor was correct.

MOTION to note receipt and file.

M/S: Livengood, Polanski.

Ayes: 5

***RA6.
AFFORDABLE HOUSING
(SHAPELL)** Approved authorization to enter into negotiations with Shapell Industries of Northern California to provide Agency Finance Assistance from its 20% Affordable Housing Set-Aside funds.

***RA7.
INVESTMENT STATUS** Noted receipt and filed the investment report for the quarter ended December 31, 2003.

***RA8.
LITIGATION EXPENSE** Approved a budget transfer to add \$250,000 to the City Attorney's Department budget for Fiscal Year 2003-2004 for public works/claims litigation expenses with funding of \$200,000 from the Redevelopment Agency undesignated reserve and \$50,000 from the non-departmental contingent reserve fund, and approve two purchase orders to Meyers Nave in the amounts of \$200,000 and \$50,000 for public works related litigation.

**RA9.
RDA ADJOURNMENT** There being no further Agency business, Mayor Esteves adjourned the Redevelopment Agency meeting at 7:44 p.m.

The City Council meeting continued.

REPORTS OF OFFICERS & BOARDS

**1.
Statewide Ballot Initiative** Mayor Esteves reported this item was placed on the agenda at his request, and he was asking the Council to adopt a resolution supporting the Statewide ballot initiative entitled the "Local Taxpayers and Public Safety Protection Act" to put the voters in charge of whether local tax dollars should be used to fund state services. Mayor Esteves said it would not raise taxes, repeal laws the state has already passed, require the return of property taxes already taken, nor affect funding of schools, and it would not prevent structural reform of the fiscal system; it would simply require that structural changes be planned collaboratively by state and local leaders and approved by the voters.

Vice Mayor Dixon commented that this was part of the process that has been going on for a few years but was actively addressed at the last League of California Cities meeting she attended. Vice Mayor Dixon said this was a very complicated process to explain that goes back to language in Proposition 13 that created the ERAF (Educational Revenue Augmentation Funds) shift of local dollars from cities and counties. Vice Mayor Dixon further stated this has to stop and she was thoroughly in favor of it.

Councilmember Polanski said that when she attended the League of California Cities meeting, this was a big item of discussion and how to keep local control locally; she was supportive; and it doesn't raise taxes but keeps local funds locally.

Councilmember Livengood asked for confirmation that this initiative would not raise the vehicle license fees back to the level under Governor Davis but would leave Governor

Schwarzenegger's action in place. Mayor Esteves confirmed that was correct. Councilmember Livengood said this measure would protect public safety and it was important that people understand that public safety is the city's most important job, there were a lot of other things that the city's does that were also important, and it was essential to keep a balanced City. Councilmember Livengood thanked the Mayor for putting this item on the agenda and expressed his support for the initiative.

MOTION to adopt Resolution No. 7382 supporting a Statewide Ballot Initiative entitled the "Local Taxpayers and Public Safety Protection Act" to require voter approval before the State Government may take local tax funds, and direct the City Clerk to send a copy to the League of California Cities.

M/S: Esteves, Polanski.

Ayes: 5

**3.
Dr. Martin Luther King, Jr.
Recognition**

Councilmember Livengood said he asked that this item be placed on the agenda at the last meeting commenting that what got him thinking about this was the Mayor's comments at the last meeting regarding Dr. King. Councilmember Livengood further stated that 18 years ago, when he was Mayor, the City of Milpitas was one of the first cities in the entire state to recognize Dr. King's birthday as a City holiday; he thought it was time to go a step further and make a significant recognition of Dr. King and all he did for our country and our city. Councilmember Livengood further stated that Dr. King's influence was felt very strongly in the community, he wanted to hear from the public but had an idea he wanted to throw out. Councilmember Livengood said when he thought of some of the things Dr. King's felt strongly about, he thought of knowledge and education as things Dr. King cherished and with knowledge came education, tolerance and equality; when he thought of those type of things that Dr. King felt strongly about, one thing that jumped out in his mind was naming the new library the City is about to build after Dr. King; other cities have named their libraries after Dr. King, and he thought it was a good idea and an appropriate recognition of his many contributions to our society. Councilmember Livengood commented that it would need to be discussed with members of the community, he had discussed it with Supervisor McHugh, who was already checking into the County policy for naming libraries, since the library is run by the County; however, everybody needed to be heard from on this. Councilmember Livengood said he would continue to talk to people in the community, he had been in touch with members of the local NAACP and talked about their experience in San Jose, he would continue to work on this issue and hoped that the citizens would come forward and give their opinions and ideas of an appropriate recognition, and he looked forward to bringing this back for future consideration by this Council.

Vice Mayor Dixon said she agreed with Councilmember Livengood that 18 years was a long time coming, she would like to see it done with expediency, and would like to see Councilmember Livengood Chair a Subcommittee comprised of a cross-section of the community and come back to the Council with a recommendation within the next few months. Vice Mayor Dixon pointed that many cities also observe March 31st in honor of Cesar Chavez, who was of particular interest to her because she had the rare opportunity to not only meet him in 1967 but to march with him; she would also like to do something for Cesar Chavez in the same manner as being considered for Dr. King because of the City's large Hispanic community and the City's history, and would like to see that go forward also as a request.

Councilmember Polanski said she agreed with the comments that had been made and thought it was wonderful that this was brought forward; she thought a subcommittee would be the appropriate way to bring all these parties together to look at Cesar Chavez and also look at others who have made a difference, which she felt would be especially appropriate given this was the City's 50th anniversary.

Councilmember Gomez said he agreed with his colleagues, noting that the City always prides itself as being on the cutting edge of history; this was definitely a way to do it honoring two individuals that have had a lasting impression on all of us; he thought this was a symbolic way

of honoring what they have done and sharing their names and contributions with future generations, so he would be supporting any motion brought forward

Mayor Esteves said he thought this was a community issue and it was important to get community input; he supported a subcommittee, however, he would like to see options or alternatives, there were a lot of factors to consider, and he was in favor of going ahead with the recommendation of forming a subcommittee headed by Councilmember Livengood.

Gomez said he would also like to be on the subcommittee.

Councilmember Livengood offered a MOTION to take the two concepts presented tonight, Dr. Martin Luther King and Cesar Chavez, and form a subcommittee that will come back to the Council after hearing from the community with options on different buildings or recognitions for those people.

Mayor Esteves commented that the agenda item was for Dr. Martin Luther King and suggested separating the two issues and having two committees with Vice Mayor Dixon heading another committee to honor Cesar Chavez rather than mixing the two. Mayor Esteves asked the City Attorney if it was appropriate to only address Martin Luther King since that was on the agenda. City Attorney Steve Mattas responded that if the Council is creating a subcommittee to take public input, it could do that and be more inclusive than just Dr. King because the Council wasn't taking a final action.

Mayor Esteves asked if any members of the audience wished to comment.

Ed Connor said he thought it was a good idea but instead of naming a specific building, he would prefer to name rooms in a building after the various people of the nations represented here, also include American Indians, and leave a few openings for the new people coming into our town from different continents of the world.

Carmen Montano said she was really glad Councilmember Livengood proposed this, she believed Martin Luther King, Jr. Library would be the best, if it wasn't for Dr. King, there would not have been Cesar Chavez because Dr. King paved the road for a lot of minorities.

Pastor Jones said that since the item on the agenda was about Dr. Martin Luther King, he felt very strongly that Dr. Martin Luther King should be recognized and he agreed with the speaker before him; it was because of what Dr. King did that we now have freedom, all the races have benefited from the sacrifices he made, and the City should make some special recognition for Dr. Martin Luther King.

A lady who did not give her name said she felt very strongly about doing something special for Dr. Martin Luther King because he paved the way for many of us here; we can look at the history and see what has happened; she thought the Council should have had something in the calendar about Martin Luther King Day but there was nothing mentioned in the calendar so she thought we should be mindful of those things and what he did for the whole country.

Mayor Esteves said he agreed that there was no question about honoring Dr. Martin Luther King and said he was ready for a motion.

Councilmember Polanski commented that she hadn't heard anyone on the Council who wasn't supportive of honoring Dr. Martin Luther King, Milpitas has a very diverse community with the foundation having been laid years ago; she thought it would be good if a committee made up of Councilmembers and members of the community (members from the City's commissions, and then members of the public and members of the NAACP that Councilmember Livengood said he had talked with) the committee could also get information from the public as to whether there are others as well as Cesar Chavez we would want to see honored in our community as we have done by naming many of the streets after City founders.

Councilmember Polanski said she thought there was no one that doesn't want to recognize Dr. Martin Luther King and what he has done for our nation.

MOTION to form a subcommittee to look at both the issues discuss tonight of appropriate recognitions of Dr. Martin Luther King and Cesar Chavez, the subcommittee will include community members and will report back to the Council with options for both individuals on how to recognize each appropriately.

M/S: Livengood, Dixon.

Mayor Esteves asked for clarification that the subcommittee would include Councilmember Livengood and Councilmember Gomez. Councilmember Livengood said that was his assumption.

VOTE ON MOTION:

ayes: 5

ADJOURNMENT

There being no further Council business, Mayor Esteves adjourned the City Council meeting at 8:13 p.m.

Gail Blalock
City Clerk

The foregoing minutes were approved by the City Council as submitted on February 17, 2004.

Gail Blalock, City Clerk

Date

APPROVED MINUTES
CITY OF MILPITAS

Minutes:	Regular Meeting of Milpitas City Council (Including Joint Meeting with Redevelopment Agency)
Date of Meeting:	January 20, 2004
Time of Meeting:	6:00 p.m. (Closed Session) 7:00 p.m. (Regular Session)
Place of Meeting:	City Hall Council Chambers, 455 E. Calaveras Blvd.

ROLL CALL

Vice Mayor Dixon called to order the regular meeting of the Milpitas City Council at 6:00 p.m. Present were Vice Mayor Dixon and Councilmembers Gomez, Livengood, and Polanski. Mayor Esteves arrived at 6:03 p.m.

CLOSED SESSION

Vice Mayor Dixon publicly stated the Council would convene in Closed Session to discuss the following four items listed on the agenda:

1. **PUBLIC EMPLOYEE PERFORMANCE EVALUATION**
(Pursuant to Government Code Section 54957)
Title: City Manager
2. **CONFERENCE WITH LABOR NEGOTIATOR**
(Pursuant to Government Code Section 54957.6)
Unrepresented Employee: City Manager
3. **CONFERENCE WITH REAL PROPERTY NEGOTIATOR**
(Pursuant to Government Code Section 54956.8)
Property: APN Nos. 86-12-015, 86-12-016, and 86-12-020
Negotiating Party: Milpitas Redevelopment Agency
Under Negotiation: Terms and Conditions for Acquisition of Property
4. **CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**
(Pursuant to Government Code Section 54956.9[a])
Title: Milpitas v. Turner Construction et al.
Santa Clara County Superior Court Case No. CV008400

Mayor Esteves adjourned the meeting to closed session at 6:01 p.m.

The City Council meeting reconvened at 7:00 p.m. with Mayor Esteves presiding and Vice Mayor Dixon and Councilmembers Gomez, Livengood, and Polanski present.

**CLOSED SESSION
ANNOUNCEMENTS**

There were no Closed Session announcements.

PLEDGE

Members of Troop No. 92 led the Council and audience in the Pledge of Allegiance.

MINUTES

MOTION to approve the City Council minutes of January 6, 2004, including joint meeting with the Redevelopment Agency, as submitted.

M/S: Gomez, Livengood. Ayes: 5

SCHEDULE

MOTION to approve the Schedule of Meetings as submitted.

M/S: Gomez, Livengood.. Ayes: 5

PRESENTATIONS

Mayor Esteves presented Paul Anthony Espinoza with a Commendation on his successful achievement of attaining the rank of Eagle Scout.

Mayor Esteves presented Don Ryan a Commendation for his many contributions to the community and recognition by the Milpitas Lions Club as “Lion of the Year.” Mr. Ryan stated it was an honor to be recognized by the City Council and that he loved Milpitas and what he is doing.

Mayor Esteves presented Carmen Montano with a Commendation in honor of her selection by the Dr. Martin Luther King, Jr. Association of Santa Clara County as a recipient of the “2004 Good Neighbor Award.” Ms. Montano said she was deeply honored to have received the award and was inspired to continue the struggle to combat injustices wherever they may be.

Mayor Esteves presented Alice Elizabeth Merritt with a Commendation in honor of her selection by the Dr. Martin Luther King, Jr. Association of Santa Clara County as a recipient of the “2004 Good Neighbor Award.” Ms. Merritt said she would like to repeat what Ms. Montano said and continue to enhance and enrich the youngsters of the community.

Mayor Esteves read a commendation recognizing the Dr. Martin Luther King, Jr., Association of Santa Clara County for its work in keeping alive the legacy and work of Dr. Martin Luther King, Jr. and presented it to Dr. Geraldine Foite, President of the Martin Luther King, Jr. Association of Santa Clara County. Dr. Foite stated she had taught in many of Milpitas’ schools and was currently in the Santa Clara USD and commended Milpitas and the MUSD for being one of the first to recognize Martin Luther King, Jr.’s birthday as a city holiday before it became a legal holiday.

Mayor Esteves read a proclamation recognizing January 19, 2004, as “Dr. Martin Luther King, Jr. Day” and presented it to local representatives of the Dr. Martin Luther King, Jr. Association of Santa Clara County.

Mayor Esteves said that in his short speech at the Dr. Martin Luther King, Jr. Day event, he stated that when Dr. Martin Luther King, Jr. is remembered, we remember freedom, equality, and diversity.

Councilmember Livengood said he appreciated the comments acknowledging that Milpitas was one of the first cities to recognize Dr. Martin Luther King’s birthday as a City holiday and felt that although Dr. Martin Luther King, Jr. is recognized for the wonderful things he did for our society and our country, Milpitas had not gone as far as some other cities. Councilmember Livengood requested an item be brought back under his name to consider possibly naming a City structure or street or something after Dr. Martin Luther King, Jr. as an appropriate way to honor Dr. King.

CITIZENS FORUM

Mayor Esteves invited members of the audience to address the Council on any subject not on the agenda, requesting that remarks, including any visual or technology-assisted presentations of any kind, be limited to two minutes or less, and noted that the City Clerk would be using the timer and when the red light at the podium came on, two minutes would be up.

Mr. Swanson said he thought it was nice to see the teachers of Milpitas have had a big voice in the history of this community and urged support for the Place Value System.

Jim Foran, Director, Santa Clara County Open Space Authority, asked the Council to consider Amicus Brief support for the Open Space Authority in the lawsuit (Silicon Valley Taxpayers Association, Howard Jarvis Taxpayers Association, et al v. The Santa Clara County Open Space Authority) currently pending in the Sixth Appellate District in San Jose.

ANNOUNCEMENTS

Vice Mayor Dixon stated she and Mayor Esteves had been honored to attend Paul Espinosa’s Eagle Scout ceremony, and that the City should be proud that it has fine young men like Paul; she attended the Police Athletic League Football Awards Banquet, which had been a great success; attended the Police Athletic League Soccer League Awards Banquet, which had also been a success; at the last Library Advisory Commission meeting, there had been discussion about the State’s economic instability and how the Federal Government is looking at the State;

discussed the necessity of the continuance of the current Library assessment coming up on the March Ballot; and the Friends of the Library had been working hard to get information sheets out and were putting together several thousands of dollars to educate the Community. Vice Mayor Dixon further stated the Friends of the Library would be holding a special Book Sale on February 14th, which would be “Romance and Computers,” and the Book Sale would take place from 10:00 to 4:00 p.m. Vice Mayor Dixon said she was an honorary member of AARP and had represented the Council for the annual swearing in of officers to the local AARP Chapter 4786.

Vice Mayor Dixon reported her first official VTA Transportation meeting was very productive, there was a \$4 billion hold by the Federal Government placed on BART which would be discussed at the workshop at the end of the month; she had been reassigned from Congestion Management to the Finance and Administration Committee; felt that her past years on the ad hoc Financial Stability Committee would assist her in helping bring about a long-term financial strategy; the VTA Board had already adopted the ad hoc’s 19 recommendations; she met with representatives from the Outreach Paratransit Organization and toured the facility; she attended the Emergency Preparedness Council meeting where an update on Homeland Security was presented, grant money was available, and Milpitas should feel very proud that its own people were taking positions of lead.

Vice Mayor Dixon, addressing the last Citizens Emergency Preparedness Advisory Commission, stated the annual school evacuation drill had begun, it would take place at Rose Elementary this year, and more information would be forthcoming. Vice Mayor Dixon reported that all the emergency supplies were in place at the various schools; and advised going to the City’s web site for more information.

Councilmember Polanski reported at the last Community Advisory Commission meeting, Arsenio Iloreta had been named Chair and Syed Mohsin the Vice Chair; called attention to the Senior Citizen 2004 Resource Directory for Santa Clara County, stated Milpitas was featured on the cover as well as inside the Directory; addressing the 50th Anniversary celebrations, reported staff had been working on the kick-off ceremony that would be taking place on Monday, January 26, 2004, at 7:00 p.m.; there would be some great activities and invited everyone to join in on the celebrations throughout the year.

Mayor Esteves congratulated and thanked Credence Systems Corporation for opening its headquarters in Milpitas and congratulated the Milpitas Christian Fellowship for sponsoring a successful musical concert at the Milpitas High School Theatre entitled “Ward Two.”

AGENDA

MOTION to approve the agenda as submitted.

M/S: Dixon, Livengood.

Ayes: 5

CONSENT CALENDAR

Mayor Esteves inquired if anyone wished to make any changes to the Consent Calendar. Vice Mayor Dixon requested item 3 be removed for a public presentation and the second part of item 6 be removed in response to a request.

MOTION to approve the Consent Calendar, items with asterisks on the agenda, as amended by the removal of item 3 and part 2 of item 6, in accordance with the staff recommendations.

M/S: Gomez, Livengood.

Ayes: 5

***4. Spay/Neuter Voucher Program**

1. Maintained existing funding for the Spay/Neuter Voucher Program.
2. Limited the number of vouchers issued to City households to three within the program year.

***5. Bikeway Master Plan**

Approved the update to the Bikeway Master Plan as recommended by the Bicycle Transportation Advisory Commission.

- *7.
Relay for Life** Approved the Milpitas Relay for Life request for fee waiver totaling \$3,649.00 from various City departments, including in-kind donation of equipment, supplies, and staffing for the June 25-26, 2004, Relay for Life event at the Milpitas Sports Center.
- *8.
2002 Park Bond
(Proposition 40)** Designated the use of the 2002 Park Bond funds (Proposition 40) for athletic court rehabilitation and adopted Resolution Nos. 7378 and 7379 authorizing the application for grant rehabilitation funds under the Roberti-Z'berg-Harris Block Grant and the Per Capita Grant Program.
- *9.
State Agreement No. M 001** Adopted Resolution No. 7380 authorizing execution of the Program Supplemental Agreement No. M 001 to Administering Agency-State Agreement No. 04-5314, subject to approval as to form by the City Attorney.
- *10.
Final Acceptance
SBWR M-2/M-3
(Project No. 6093)** Adopted Resolution No. 7381 granting initial acceptance of SBWR M-2/M-3 (Project No. 6093), subject to a one-year warranty period and reduction of the faithful performance bond to \$352,197.71.
- *12.
Carollo Engineers
(Project No. 7076)**
 1. Approved agreement amendment with Carollo Engineers in the amount of \$185,000.00 for well upgrade project (Project No. 7076), and authorized the City Manager to execute the amendment, subject to approval as to form by the City Attorney.
 2. Approved budget appropriation of \$140,000 to provide for the VTA requested design change.
- *13.
Central Contra Costa
Sanitary District** Authorized the City Manager to execute an agreement with the Central Contra Costa Sanitary District for the provision technical consulting services, subject to approval as to form by the City Attorney.
- *14.
City Aerial Orthophoto** Authorized the City Manager to execute an agreement with Towill Inc., for orthophotography in an amount not to exceed \$63,200, subject to approval as to form by the City Attorney.

PUBLIC HEARINGS

- 1.
Weed Abatement** Fire Marshal Patti Joki reported the Council had adopted Resolution No. 7371 at its December 16, 2003, meeting declaring weeds on certain described properties to be a public nuisance and setting this public hearing date; a copy of Resolution No. 7371 had been forwarded to the Santa Clara County Fire Marshal, a notice of Public Hearing was subsequently published and property owners were mailed a notice of the proposed abatement by the Santa Clara County Fire Marshal. Ms. Joki explained that the purpose of the public hearing was for property owners who objected to the removal of the weeds to state their objections before the weeds were removed and the costs made a lien upon the property.
- Councilmember Gomez questioned if the parcels on the list were undeveloped parcels. Ms. Joki confirmed that the majority of the list was undeveloped parcels and there were no residential parcels on the list.
- Vice Mayor Dixon, referring to a letter from the Breitels concerning the abatement of weeds on City property, asked Ms. Joki to comment on the problem. Ms. Joki responded the responsible party had been notified to abate the hazard and due to their failure, the City would abate the hazard and pursue cost recovery. Ms. Joki said the piece of property Ms. Breitels was referring to had not been placed on the listing because the property did not necessarily fall under the category of being abated under the County program (was a smaller sized area, which the responsible party should go through and abate).
- Councilmember Gomez inquired if the property in question could be put on the list so that it got regularly abated. Ms. Joki said she did not believe it could, but would check with the County. City Manager Wilson added that staff would be paying attention to the site in question now that it had been noticed to the City.

Mayor Esteves opened the public hearing and invited comments. There were no requests.

MOTION to close the public hearing.

M/S: Dixon, Livengood.

Ayes: 5

MOTION to adopt Resolution No. 7375 ordering the County Fire Marshal to abate the nuisance, keep an account of the cost, and embody such account in a report and assessment list to the City Council in accordance with the Milpitas Municipal Code.

M/S: Dixon, Gomez.

Ayes: 5

**2.
2003 Citizen Options for
Public Safety Grant**

Police Commander Dennis Graham reported that the California State Legislature had awarded \$100,000 to the City of Milpitas through the Citizen Options for Public Safety Grant; it required no City matching funds; grant monies must be used to support police services. Commander Graham stated police staff had met and decided the funds could best use for purchasing new Tasers to replace obsolete Tasers; Eo Tech sites (to improve accuracy) and shoulder slings (for easier handling) for AR15 rifles; multi-channel digital video recorder to record traffic events and criminal activity at 17 major intersections; Skytrack software to improve the capability of the Investigations Unit's GPS tracking device; microphone kit for packsets to improve radio transmissions and officer safety; moving radar for traffic car; night vision monocular to enhance nighttime searches; event recorder software to retrieve accident data from airbags; Kevlar gloves for cut and slash protection; crowd control bags for gas masks and filters; digital audio recorders for field use by detectives; 3 Motorola packsets for Communications for evacuation scenarios and tactical dispatching; shirts, jackets and vests for evidence technicians during intense crime scene evidence collection; thermal imaging to help detect suspicious persons, vehicles and objects during darkness; 15 lockers to provide additional storage of anti-terrorist protective equipment and other gear; and a sensor system to detect motion inside buildings during hostage or barricaded suspect situations.

Mayor Esteves requested confirmation that the City would not encounter any personnel costs. Commander Graham confirmed there were no personnel costs involved. Mayor Esteves asked that the public be told where the 17 intersections were so they would know that the City has Skytrack software that would be installed. Commander Graham announced the following intersections: Dixon Landing at McCarthy, Dixon Landing at Milmont, Milpitas at Dixon Landing, Milpitas Boulevard at Sunnyhills (2 locations = S/B Milpitas at Sunnyhills and Milpitas at W/B Sunnyhills), N/B Milpitas at Sunnyhills, Milpitas at E/B Sunnyhills, Milpitas at Jacklin/Abel, Jacklin and Escuela, Jacklin and Hillview, Calaveras and Hillview, Calaveras at S/B Milpitas, W/B Calaveras at Milpitas, Calaveras at N/B Milpitas, E/B Calaveras at Milpitas, Calaveras and Abel, Calaveras and Abbott (4 different angles), Great Mall at Main Street (3 different angles), Great Mall at Abel (4 different angles), Great Mall at I-880, Tasman and Alder (4 different angles), and Tasman and McCarthy (4 different angles). Commander Graham explained that Traffic Engineering had worked with the County on the Smart Corridor Project and these were the 17 camera angles that had been determined to be appropriate; it was desired to have a recording system that would record and hold/store for several days incidents like major traffic accidents, crimes, etc.

Mayor Esteves expressed concern there was nothing planned on Park Victoria and inquired if there was anything for east of I-680. Commander Graham explained intersections were selected where major traffic accidents or crime activity occurred, were identified by the County and Traffic sections; advantage was being taken of the cameras and camera angles that had been predetermined; and the system would take information from up to 32 different cameras.

Councilmember Livengood requested clarification that the cameras would not be monitored but would be collecting data for later viewing. Commander Graham confirmed that was the case.

Mayor Esteves asked Commander Graham to explain “thermal imaging”. Commander Graham said it was a device used at night or in dark atmospheres, which quickly shows all objects that are warm.

Mayor Esteves opened the public hearing and invited comments. There were none.

MOTION to close the public hearing.

M/S: Dixon, Livengood. Ayes: 5

MOTION to approve appropriation in the amount of \$100,000 into the police operating budget.

M/S: Dixon, Livengood. Ayes: 5

JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

**RA1.
CALL TO ORDER** Mayor Esteves called to order the regular meeting of the Milpitas Redevelopment Agency, meeting jointly with the City Council, at 8:08 p.m.

**RA2.
ROLL CALL** Present were Mayor Esteves, Vice Mayor Dixon, and Agency/Councilmembers Gomez, Livengood, and Polanski.

**RA3.
MINUTES** MOTION to approve the Redevelopment Agency minutes of January 6, 2004, including joint meeting with the City Council, as submitted.

M/S: Gomez, Polanski. Ayes: 5

**RA4.
AGENDA** MOTION to approve the Agenda and Consent Calendar as submitted.

M/S: Gomez, Polanski. Ayes: 5

***RA5.
CIVIC CENTER PROJECT
CLOSEOUT/RELEASE OF
RETENTION** Approved release of retention in the amount of \$30,000 for Royal Glass.

**RA6.
FY 03-04 MID-YEAR
BUDGET MODIFICATIONS** Finance Director Emma Karlen reported that the City’s current budget policies require that any additional appropriation to a department or a project budget or re-appropriation of money from one fund to another must be approved by the City Council; staff was bringing forth the mid year budget adjustments for the Council’s consideration and approval; and the mid-year adjustments consisted of three categories: (1) Transfer of money between funds; (2) Additional budget appropriations to cover expenditures; and (3) Monies returned to fund balances. Ms. Karlen explained that \$5.9 million was requested to be transferred from the RDA Project fund to the Housing Reserve Fund for better accounting and interest income allocation and the amount represented the Housing Fund portion of the 1997 Redevelopment Agency Tax Allocation Bond.

Ms. Karlen explained that the second type of budget adjustment was additional appropriations to increase either the department or project budget where additional funding was needed to cover expenditures; the requests submitted were based on changing needs and conditions that were not anticipated at the time of budget preparations; some of the funding requests would be offset by additional revenue (i.e., payment from private job developers, reimbursements, grants, or developers fees for projects); and other funding requests required the use of fund balances. Ms. Karlen further explained that the third type of budget adjustment was to return money to Fund balances primarily due to completion of CIP projects or the ability of other funding sources such as grants. Ms. Karlen stated the overall impact to the City and the

Agency budget, based on the budget requests, was \$28,090,017, which included a net reduction of \$23,193 to the General Fund unreserved, undesignated fund balance; and there were sufficient balances in the General Fund and the Agency Fund to accommodate the request.

Councilmember Livengood, referring to the resolutions amending the Classification Plan, inquired why they were before the Council, as they seemed to be increasing salary ranges. Ms. Karlen explained that although the items had a nominal budget impact at this time, they were related to either increasing a salary range or because of the change of personnel, which has to be brought to the City Council, and staff was using the mid-year budget to bring it to the Council. Councilmember Livengood said he did not understand why only the five positions were being done and not the rest of the City; what was it about the positions that required the increase in the proposed ranges. City Manager Wilson explained that the Deputy City Clerk position was to increase the range based on a survey of the position in relation to comparable positions in the region, and it was being requested because it was found that that position was way below market in our region; the reason for it being done at this particular time was to address merit opportunities. Addressing item 3, Mr. Wilson said the Council's policy had been to aggressively eliminate car allowances as a separate identified program; the remaining car allowances in top staff were being asked to be included into the range of the pay as the Council had done to other classifications in the past; and this would eliminate all car allowances except for two union positions that have to be negotiated.

Mayor Esteves inquired what was the actual fiscal impact of the personnel changes. Ms. Karlen stated the only one that had fiscal impact was the Deputy City Clerk, which was approximately \$18,000 for the whole fiscal year; the rest of the positions already included car allowance in the current year budget and there was no budget impact; however, there was a negligible PERS contribution impact.

Mayor Esteves inquired if the position was the only one that needed to be adjusted. City Manager Wilson responded that on a regular basis that corresponds to the annual adoption of the budget, the Human Resources Department did reviews of the pay ranges in relation to market and to the salary proposals that were made and some positions were brought to attention by Department/Division Managers/Directors for special survey. Mayor Esteves expressed concern that this could be the first request in a line of requests that would be forthcoming. City Manager Wilson said that these were very rarely brought before the Council out of sequence; he did not believe that it had been done more than twice in his tenure with the City; it was not a common practice; wanted to make adjustments when there were substantial differences in position compensation in the market; and with regard to the salary adjustments to the car allowances, that would be a one time only event.

Mayor Esteves stated he did not have a problem as long as there would be no more until the budget hearing. City Manager Wilson said he was not aware of anybody who was recommending any consideration outside the budget cycle for the FY04-05 year.

Councilmember Livengood requested clarification that the people on the second resolution were not getting a pay increase. City Manager confirmed that was correct. Councilmember Livengood, referring to the first resolution, inquired if the person would be getting the raise of approximately \$18,000. City Clerk Blalock stated it was her understanding that the person would not go to the top of the range, but believed it would be achieved in 5% merit increments. Human Resource Direct Rosenquist confirmed that was the intention.

Councilmember Gomez stated he would be supporting the staff recommendation; referring to the large range, he felt it indicated something was wrong and that person was not being paid the scale; he did not consider it a raise so much as an adjustment for the individual; and requested a copy of the survey for his own record. Ms. Rosenquist stated she would be happy to supply that for Councilmember Gomez and further stated an internal alignment review had been done to create an opportunity for career ladders for individuals; in this particular incident, it was a position that was part of Senior Management and was also the precursor to

the City Clerk with the understanding that if a person were to be in that position, then they could promote to City Clerk; staff wanted to afford an opportunity to be able to promote into this position internally if that were available, and a pay increase was desired in order for employees to do that, and internal alignment also weighed heavily on the decision.

MOTION to:

1. Approve the Fiscal Year 2003-04 mid-year budget transfers and appropriations as itemized in the budget change form included in the Agency/Council's agenda packet.
2. Adopt Resolution Nos. 7376 and 7677 to amend Resolution 1626, the Classification Plan.

M/S: Livengood, Gomez.

Ayes: 5

**RA7.
FINANCIAL STATUS
REPORT**

Finance Director Karlen presented the Financial Status Report for the six months ended December 31, 2003, reporting that the regional unemployment rate was higher than the Nation and the State and sales tax revenue continued to decline in Santa Clara County. Ms. Karlen reviewed General Fund revenue reporting that all major revenues were down approximately 13 percent compared to the same time period last year. Ms. Karlen also reviewed revised General Fund revenue projections at \$3.95 million below the adopted budget due in large part to the permanent loss of motor vehicle in lieu fees this fiscal year and also a reduction in sales and use tax. Ms. Karlen reviewed General Fund expenditures reporting that as of the end of December, budgeted expenditures should be \$30.5 million (50 percent of \$61 million) but were slightly under budget at 47 percent, representing a year-to-date savings of approximately \$1.8 million.

Councilmember Gomez asked for clarification that as of now, the City has only collected approximately \$600,000 in motor vehicle fees. Ms. Karlen responded right now, the City is not able to collect \$857,000 and only one-third of the motor vehicle fees had been remitted.

Mayor Esteves said he would like to see a slide comparing General Fund revised revenues to the same time for FY 2003. Ms. Karlen referred to the schedule attached to the package the Council received showing FY 2003 General Fund revenue at \$39.4. Mayor Esteves asked if a table comparing adjustments could be provided. City Manager Wilson commented that the projections were based upon experience during the first half of this year and staff could show what was occurring at the same time last year; the problem was that the \$1 million just taken from VLF was the largest distortion in these numbers at this point; if we had that back, you would see the reduction in projections a bit less. Mr. Wilson further commented that it represented a half year on the expenditure side and once again the staff has done a very positive job in coming in significantly under budget; if we can maintain three to five percent at the end of the year, the \$3.95 million gap would be closed down with savings at about \$3.6 million, if the current savings rate was maintained.

Councilmember Polanski commented that the City lost \$1 million in VLF this year and based on everything she had heard, the vehicle license fees were probably permanently lost forever. City Manager Wilson responded staff really didn't know but the best estimate was that money would be returned to cities, as promised by the Davis proposal, in 2006; cities hadn't heard anything about Governor Schwarzenegger proposed budget yet; across the state cities are lobbying for a commitment for restoration like was given to the schools; the \$1 million number Milpitas lost is \$10 million for San Jose, so you can see how the impacts will hit cities across the state.

Councilmember Gomez asked what happens if the bond doesn't pass; did staff have any idea what Milpitas will be losing? Mr. Wilson said it wouldn't have any impact on the VLF because the commitment at this point by the Legislature and the Governor is for restoration; they are going to pay for that by the Governor's proposal by permanently taking property tax in almost the same amount; the difficult issue with regard to the bond proposal is that it will be amortized by one-fourth of city and county sales tax, and for Milpitas it would amount to approximately \$3 million, it's a very complicated program and the bond would have to be paid

off by a new funding stream. Councilmember Gomez, commenting on capital projects, said for budget time he would be interested in seeing some long-term strategy as to how we are going to pay for operating and maintenance costs.

Ms. Karlen reviewed the proposed budget dates for Fiscal Year 2004-05 reporting that only May 11 and May 13 were non-regular Council meeting dates.

MOTION to note receipt and file.

M/S: Gomez, Polanski.

Ayes: 5

**RA8.
ADJOURNMENT**

There being no further Redevelopment Agency business, Mayor Esteves adjourned the Redevelopment Agency meeting at 9:04 p.m.

The City Council meeting continued.

UNFINISHED BUSINESS

**3.
Odor Control Update**

Vice Mayor Dixon removed this item from the Consent Calendar for an oral report.

Principal Engineer Darryl Wong presented an oral update of the odor control coordination activities and key events that occurred during the past month that were listed on the agenda and reported a draft odor control action plan was included in the Council's agenda packets.

Vice Mayor Dixon said she had no questions – just compliments on the design of the complaint form.

Bill Jones, representing BFI, said Mr. Wong had been working very hard on this plan and explained what BFI was doing short-term and long-term with respect to the relocation of compost processing facilities.

Mayor Esteves expressed appreciation to BFI for their continuing efforts.

MOTION to note receipt and file progress report.

M/S: Polanski, Livengood.

Ayes: 4

Absent: 1 (Gomez)

Councilmember Gomez was out of his seat when the vote was taken.

NEW BUSINESS

**6.
Marquee Request
Friends of the Library**

Vice Mayor Dixon removed the second part of this item from the Consent Calendar stating she had a request from the Friends of the Library to remove their request to use the Marquee January 21-March 2 so they would be allowed to come back at the next meeting with a revised request. City Manager Wilson noted the first part (use of the Marquee January 21-February 6) had been approved and the second part would come back in two weeks. City Attorney Mattas said no further action was required.

BIDS & CONTRACTS

**11.
Consultant Agreement
Ethics Program**

Acting Planning Director Tambri Heyden presented the proposal to contract with Tom Shanks Consulting for preparation and implementation of an Ethics Program at a total cost not to exceed \$21,960.00. Ms. Heyden explained the scope of work included code preparation that would begin in March and be completed in May 2004; candidates for the November election would be trained in advance of the November election; and training would be in two phases and include a series of campaign ethics workshops between June and August 2004 for campaign candidates and a second phase would include a series of ethics code workshops held in November and December after the election for elected officials, commissioners, and senior

management staff. City Attorney Mattas clarified that the hourly rate listed in Exhibit A for Dr. Riley should be \$120 and not \$125, for a total of \$960, and the maximum contract amount would be \$21,960 as listed on the agenda.

Councilmember Livengood inquired what would happen if there was a perception that ethics somehow had been breached, commenting that this was the only element that was not clear to him. City Attorney Mattas responded the present contract did not include an enforcement provision but that could be done as a separate act; Dr. Shanks suggested and what was included in the contract was training for candidates this year and part of the post-election assessment to see how the processes worked; if the Council wanted to enter into a process for enforcement, it could be done by virtue of further Council action/direction, but right now it would be self-enforcement.

Councilmember Livengood asked what implementing the code and guidelines meant (implementation plan)? Mr. Mattas responded as defined in the contract and in conversations with Dr. Shanks, educational materials and how to monitor program effectiveness -- the detail he created for an ethics code and the material he provided were much more detailed than what has been seen in other Codes of Ethics.

Councilmember Polanski commented that part of the implementation plan was to provide election campaign training and some educational materials so all of that would be part of the implementation plan. Councilmember Polanski said the CAC was still very interested in moving forward with this and were more than willing to assist to see that this was carried forth and we get input, not only from stakeholders, but the community; if a steering committee becomes part of this, one of the CAC members, Craig Ranker, who has been very active in this would very much like to be on that committee. Councilmember Polanski commented on a recent discussion in the San Jose Mercury News on ethics, consultants, and lobbyists and she believed a lot of the items in the article were very appropriate and should be included in the scope.

Vice Mayor Dixon said she thought this subject was probably the most appropriate thing to happen in the valley right now; if ever there was a thing driven home in Iowa by the surprise turnaround, people were truly tired of negative campaigning; she thought what Councilmember Polanski hit upon was a series of articles in the Mercury and at the end of each editorial they had an invitation -- who will step up to ensure that the public knows who's wielding influence, how much money is in place, and who's ponying up. Vice Mayor Dixon said this Council was the only one putting an ethics code together right now and she would like to see something legally that would put teeth into an ordinance and strongly encouraged the Council to include this as part of the scope when we sit down with the contract with Dr. Shanks.

Mayor Esteves inquired what was preventing completing the whole cycle and including the enforcement portion and felt it may be a futile effort if enforcement didn't come into play.

Councilmember Polanski said one of the main reasons was when this was being put together, the main focus of the CAC was to educate the public going into the campaign about what to look for in a clean v. negative campaign and what to look for with slate mailers; part of what the CAC was looking at in the initial year was that the education portion be provided to the public; the CAC felt that if the public was educated about good campaigns, they felt that would be quite a task to put on top of the actual code and then work with enforcement. City Attorney Mattas said he agreed with Councilmember Polanski's comments commenting that this was a pretty aggressive time schedule and because of the full scope of work that needed to be done and particularly because of the educational aspect, we felt this was the appropriate way to do this and the timing to do this; Dr. Shanks also believed that the training and post-election awareness survey were very valuable in terms of assisting folks in understanding the impact and actions and felt it an important step for this process to go through.

Mayor Esteves said he wanted to make sure the code was clear and not subject to misinterpretation.

Councilmember Livengood said he thought this was a sound way to proceed and also thought it important for the public to know that this would be a full review of conduct - not only the kind of mailers sent out but also the way candidates conduct themselves; it would also have a lot of input regarding the way elected and appointed officials conduct themselves in office; he agreed with the City Attorney this was an ambitious plan, however, you have got a plan and he thought it could be achieved if we work very hard, and he was grateful to everybody who put the effort in on this.

Mayor Esteves said the issue of information or misinformation needed to be emphasized.

Vice Mayor Dixon said the word was manipulation, she agreed with Councilmember Livengood that a lot of work had gone into this, she wanted to make sure some type of code as to how far we can go imposing a code or registration for lobbyists and consultants to know who they are representing was included, cited the \$2,000 threshold in San Jose and requested that when staff brought this back to the Council, the threshold might be lowered to \$1,000 because Milpitas is much smaller than San Jose.

MOTION to authorize the City Manager to execute the consultant agreement with Tom Shanks Consulting in an amount not to exceed \$21,960 and include a lobby and consulting portion.

M/S: Polanski, Dixon.

Ayes: 5

**CLOSED SESSION
(CONTINUATION)**

Mayor Esteves announced the Council would adjourn to Closed Session to continue discussion of the items listed on the agenda. Mayor Esteves adjourned the City Council meeting to Closed Session at 8:51 p.m. The City Council meeting reconvened at 9:17 p.m.

ADJOURNMENT

There being no further Council business, Mayor Esteves adjourned the City Council meeting at 9:17 p.m.

Gail Blalock, CMC
City Clerk

The foregoing minutes were approved by the City Council as submitted on February 3, 2004.

Gail Blalock, City Clerk

Date

APPROVED MINUTES
CITY OF MILPITAS

Minutes:	Regular Meeting of Milpitas City Council (Including Joint Meeting with Redevelopment Agency)
Date of Meeting:	January 6, 2004
Time of Meeting:	6:00 p.m. (Closed Session) 7:00 p.m. (Regular Session)
Place of Meeting:	City Hall Council Chambers, 455 E. Calaveras Blvd.

ROLL CALL

Mayor Esteves called to order the regular meeting of the Milpitas City Council at 6:00 p.m. Present were Mayor Esteves, Vice Mayor Dixon, and Councilmembers Gomez, Livengood (arrived 6:05 p.m.), and Polanski.

CLOSED SESSION

Mayor Esteves publicly stated the Council would convene in Closed Session to discuss the following two items listed on the agenda:

1. **PUBLIC EMPLOYEE PERFORMANCE EVALUATION**
(Pursuant to Government Code Section 54957)
Title: City Manager

2. **CONFERENCE WITH LABOR NEGOTIATOR**
(Pursuant to Government Code Section 54957.6)
Unrepresented Employee: City Manager

Mayor Esteves adjourned the meeting to closed session at 6:01 p.m.

The City Council meeting reconvened at 7:08 p.m. with Mayor Esteves presiding and Vice Mayor Dixon and Councilmembers Gomez, Livengood, and Polanski present.

**CLOSED SESSION
ANNOUNCEMENTS**

There were no Closed Session announcements.

PLEDGE

Members of Troop No. 92 led the Council and audience in the Pledge of Allegiance.

MINUTES

Councilmember Polanski requested an addition to her comments on page 2 of the December 16, 2003, minutes under Announcements, to add: "There has been some mention in the press, especially after the last meeting, no one at the City Attorney's office had been asked for any opinion on the Mayor's term limits prior to last Friday and none that I know of since by either the CAC or a member of the Council." Councilmember Livengood asked for clarification that the comments were made by Councilmember Polanski on December 16, and stated that he didn't have a problem as long as the comments were made at the meeting but he would have a problem if something new were being added. Councilmember Polanski confirmed that she made the remarks at the December 16 meeting.

MOTION to approve the City Council minutes of December 9, 2003, as submitted and December 16, 2003, including joint meeting with the Redevelopment Agency, as amended by Councilmember Polanski.

M/S: Livengood, Gomez.

Ayes: 5

SCHEDULE

Vice Mayor Dixon said she thought a Library Advisory Commission meeting was scheduled for January and on the 29th, she had a meeting of the Santa Clara County Library Joint Powers Authority. Councilmember Livengood said there would be a Library Subcommittee meeting on January 27. Councilmember Polanski noted that the 50th Anniversary Committee would meet at 6:30 p.m. on January 21, a week before the celebration on January 26.

MOTION to approve the Schedule of Meetings for January as amended.

PRESENTATIONS

Mayor Esteves presented a Commendation to Angelica Le, Second Place winner in the fifth grade division in the Water Awareness Poster contest. Mayor Esteves invited Angelica's family to join him at the podium for a photograph.

Mayor Esteves presented a Commendation to Emily Dano, Second Place winner in the sixth grade division in the Water Awareness Poster contest. Mayor Esteves invited Emily's family to join him at the podium for a photograph.

Mayor Esteves noted that Third Place winner in the fifth grade division, Aaron Cayabyab, could not be present and his Commendation would be sent to him.

Mayor Esteves read a Proclamation recognizing Traffic Engineer, Arlene DeLeon, on her retirement from the City after 23 years and highlighting her many accomplishments. Mayor Esteves expressed appreciation on behalf of the Council and said she would be greatly missed. Vice Mayor Dixon added a personal note of thanks to Ms. DeLeon, reflected on Ms. DeLeon's diligent work when Vice Mayor Dixon was on the Planning Commission, and said she would really miss Ms. DeLeon on the Bicycle Transportation Advisory Commission.

CITIZENS FORUM

Mayor Esteves invited members of the audience to address the Council on any subject not on the agenda, requesting that remarks, including any visual or technology-assisted presentations of any kind, be limited to two minutes or less, and noted that the City Clerk would be using the timer and when the red light at the podium came on, two minutes would be up.

Mr. Swanson wished everyone a Happy New Year and said he was thinking about the history of India and its prior governance by the English and India's influence on the place value system. Mr. Swanson encouraged parents to pass on to their children belief in this number system.

Debbie Giordano wished everyone a Happy New Year and said that on May 6 the issue of a non-denominational invocation was on the Council agenda and deferred. Ms. Giordano said this was almost eight months ago and asked the Mayor and Council to place this on the next agenda to make a decision. Ms. Giordano further stated taxpayer dollars have already been spent on this issue, it appeared from reviewing the program outline for the January 26th Anniversary Celebration that the policy decision to allow an invocation and a benediction at a City-sponsored event in these Council Chambers had already been made, and now it was time to make it a part of Council meetings. Ms. Giordano asked that God bless the men and women fighting the war on terror, their families, especially the family of Michael Mihalakis, the members of the City's Police Department and Fire Department, the Mayor and members of the City Council, and our home, Milpitas.

Frank DeSmidt, representing the Chamber of Commerce, invited everyone to attend the "Good Morning Milpitas Breakfast" at 7:30 a.m., January 23, 2004, at the Embassy Suites.

ANNOUNCEMENTS

Councilmember Polanski wished everyone a Happy New Year commenting that 2004 should be a very exciting year with the celebration of the City's 50th anniversary; prior to Christmas, the Senior Advisory Commission met and received an update on the new modulars at the temporary Senior Center; she toured the facility with Mark Rogge and the City Manager and was impressed with the space; with Vice Mayor Dixon, she attended the Senior Center's annual New Year's Luncheon; last evening the Parks, Recreation, and Cultural Resources Commission met and Steve Munzel was once again elected Chair and Frances Krommenhock Vice Chair; invited everyone to celebrate the City's 50th Anniversary on January 26th at 7:00 p.m. in the Council Chambers, commenting that the historical book on Milpitas would be unveiled. Councilmember Polanski said she had an opportunity to preview the draft of the book and thought not only the Council but also the citizens will be thrilled with the book.

Vice Mayor Dixon wished everyone a Happy New Year and shared her experience representing the City at the funeral service for Michael Mihalakis, in whose memory the Council would be adjourning tonight's meeting. Vice Mayor Dixon said she had attended many funerals at Cedar Lawn over the years but this particular funeral struck a chord for the over 300 people attending; it was a very emotional service, Michael's parents, Diane and George, typified what is good about this City as a family, Diane did the mural work at Pomeroy Elementary School and Russell Middle School, and the School District was represented, too. Vice Mayor Dixon further stated those of us who are parents could relate to the fact that our young people are dying over there, Michael was a very bright young man who just turned 18, letters he wrote during his seven months over there were read during the service, and the service brought together over 300 people and only a handful of people knew each other. Vice Mayor Dixon said it was a very proud moment for her to share that type and degree of emotion. Vice Mayor Dixon noted that the Council would be adjourning the Council meeting in honor of Michael and, as the Council may remember, a new plaque was being ordered for the Veterans' Memorial site and yesterday, at the Civic Center Subcommittee meeting, she requested that Michael's name be put on the plaque.

Mayor Esteves acknowledged that the Council would be adjourning the meeting in Michael's honor, the flags at City Hall had been lowered to half-mast in his honor, and Michael had brought honor and dignity to Milpitas, to California, and the whole United States.

Mayor Esteves commented on his Sister City trip to the Philippines and thanked the City of Dagupan for the grand reception and accommodations. Mayor Esteves described some of the events including a grand cultural night, a tour of the City's major industry (fishing), meetings with Lions and Rotary Clubs and Knights of Columbus and the possibility of establishing twin relationships, meetings with elected officials, and visits to schools. Mayor Esteves said he was awarded an honorary doctorate in humanities from Dagupan's prestigious Lyceum Northwestern University, he was honored together with the City of Milpitas, and was proud to have represented the City. The Mayor noted that a visit to Milpitas from Dagupan City was expected.

AGENDA

MOTION to approve the agenda as submitted.

M/S: Gomez, Polanski.

Ayes: 5

CONSENT CALENDAR

Mayor Esteves inquired if anyone wished to make any changes to the Consent Calendar. There were no requests.

MOTION to approve the Consent Calendar, items with asterisks on the agenda, as submitted in accordance with the staff recommendations.

M/S: Gomez, Livengood.

Ayes: 5

***1.**

Appointments/Reappointments

Approved the Mayor's appointments and reappointments as follows:

Community Advisory Commission: Move Craig Ranker from Alternate 2 to Alternate 1 (term expiring January 2005); move Chris Lee from Alternate 3 to Alternate 2 (term expiring January 2006); move Nestor Luna from Alternate 4 to Alternate 3 (term expiring January 2006); and appoint Jenifer Lind to the Alternate 4 position (term expiring January 2005).

Senior Advisory Commission: Appoint Ed Connor to the Alternate 2 position, with a term expiring December 2005.

Telecommunications Commission: Reappoint Niranjana Gupta, Dinesh Gupta, M. Idrees Munir, Vishnu Mathur, and Aaron Ettinger (Alternate No. 2) each to new two-year terms expiring January 2006.

***4.**

Waived full reading of the ordinance and adopted Ordinance No. 22.3, amending Title V,

Ordinance No. 22.3

Chapter 1 of the Milpitas Municipal Code to update the City's Disaster Council and add CitizenCorps.

***5.
Joint Powers Agreement
Bay Area Employee Relations**

Adopted Resolution No. 7374 approving the Joint Powers Agreement, with amendments, with the Bay Area Employee Relations Service.

***6.
Hillside Water System
(Project No. 7083)**

1. Authorized staff to approve the contract change order in the amount of \$329,325.00 to Blocka Construction Inc.
2. Approved Agreement Amendment with Bay Area Coating Consultant Services in the amount of \$34,000.00, and authorized the City Manager to execute the amendment subject to approval by the City Attorney.
3. Approved the budget appropriation from the water fund reserves into Project No. 7083 for \$363,325.00.

***7.
GSS Consulting
Various CIP Projects**

Authorized the City Manager to execute the Agreement Amendment in the not-to-exceed amount of \$137,795 with GSS Consulting for various CIP Projects, subject to approval as to form by the City Attorney.

***8.
Interim Senior Center
(Project No. 8151)**

1. Approved plans and specifications for the Interim Senior Center Interior and Kitchen Improvements.
2. Authorized advertising for construction bid proposals.

***9.
Security Services**

Awarded a 6 months contract for security services to Allied Security, Inc., for an amount not to exceed \$ 36,182.39 as recommended by staff.

***10.
Public Works Garment**

Awarded bid for garment purchases to the lowest bidder, Century Graphics in the amount of \$27,674.74.

***11.
Miscellaneous Vendors**

Approved the following purchase requests:

1. \$5,476.00 to Medtronic Physio-Control for annual technical service and maintenance support services of portable defibrillators for the Fire Department. (Funds are available from the Fire Department operating budget for these services.)
2. \$5,306.96 to Target Specialty Products for the purchase selective pre-emergent herbicide that provides control of annual grasses and broadleaf weeds in landscape ornamentals and ground covers for the Landscape Maintenance Division. (Funds are available from the Public Works Department operating budget for this purchase.)

PUBLIC HEARINGS (NONE)

JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

**RA1.
CALL TO ORDER**

Mayor Esteves called to order the regular meeting of the Milpitas Redevelopment Agency, meeting jointly with the City Council, at 7:40 p.m.

**RA2.
ROLL CALL**

Present were Mayor Esteves, Vice Mayor Dixon, and Agency/Councilmembers Gomez, Livengood, and Polanski.

**RA3.
MINUTES**

MOTION to approve the Redevelopment Agency minutes of December 16, 2003, including joint meeting with the City Council, as submitted.

M/S: Dixon, Polanski. Ayes: 4 Absent: 1 (Livengood)

**RA4.
AGENDA**

MOTION to approve the Agenda and Consent Calendar as submitted.

M/S: Gomez, Polanski. Ayes: 4 Absent: 1 (Livengood)

Councilmember Livengood was out of his seat when the votes were taken.

**RA5.
LIBRARY PROJECT UPDATE**

Capital Improvement Program Manager Mark Rogge presented an update on the Library Project reporting that the draft Library Program was presented to the Library Subcommittee on November 25, 2003; the subcommittee requested additional information and provided direction needed to complete the Building Program; and the Library Program was revised and will be presented to the Subcommittee on January 27, 2004. Mr. Rogge reviewed other pre-design work underway including environmental studies and clearance, relocation of the Public Works Corporation Yard, the Underground Utility District, and mapping and site clearance. Mr. Rogge then reviewed the next steps regarding the final Building Program, the architect selection, and design work.

Vice Mayor Dixon said she had already discussed this with Mark and commented on an article in the paper regarding the City of Lafayette Library and Learning Center's collaboration with 12 Bay Area educational and cultural institutions, she had contacted the County Librarian who is doing some research, and she thought this was something that could be incorporated into the early planning stages for the new library.

Mayor Esteves commented that this presentation was in response to a request to have a regular presentation, it was important for the Council to be informed and also important that residents be informed about this project, and all input was welcome.

MOTION to note receipt and file.

M/S: Dixon, Polanski.

Ayes: 5

***RA6.
AGREEMENT
HEALTH CLINIC/SENIOR
HOUSING SITE PLANS**

Authorized the Executive Director to enter into an agreement with Hardison, Komatsu, Ivelich & Tucker (HKIT) with the fee not to exceed \$15,000 for the preparation of alternative health clinic/senior housing site plans.

***RA7.
CONTRACT
APRAISALS**

Authorized the Executive Director to execute an agreement with Dana Property to prepare the appraisals in an amount not to exceed \$12,000, with the contract subject to approval as to form by the City Attorney.

**RA8.
ADJOURNMENT**

There being no further Redevelopment Agency business, Mayor Esteves adjourned the Redevelopment Agency meeting at 7:47 p.m.

The City Council meeting continued.

UNFINISHED BUSINESS

**2.
2004 Commissioners'
Recognition**

Public Services Supervisor Jennifer Tagalog reported that staff had surveyed City Commissioners as to their preference for the type of event (dessert social, appetizers, BBQ, sit-down dinner) and the gift (a gift commemorating the City's 50th Anniversary or a 50th Anniversary gift to the City in lieu of individual gifts); the majority of Commissioners voted to have a BBQ Buffet, to forgo an individual gift/plaque, and donate the individual gift/plaque monies towards a group gift to the City for its 50th Anniversary. Ms. Tagalog said that the Commissioners would be presented with a certificate with both the City logo and the 50th Anniversary logo; there was a total of \$15,000 budgeted for this event to include meals, gift/plaque, invitations, certificates/certificate holders, and other necessary supplies; and the food cost was based on an attendance of 225. Ms. Tagalog further stated that staff recommended Armadillo Willy's due to the fact they are reasonably priced and are a well-known quality restaurant, a contribution of \$5,000 towards the purchase of the Cartwheel Sculptures to be displayed near City Hall, and \$1,000 towards a plaque to be displayed near the Cartwheel Sculptures acknowledging the gift from the Commissioners to the City for the Commissioner's Recognition on Friday, July 23, 2004.

Councilmember Livengood inquired if Quincy's BBQ was the only one within the City of Milpitas. Ms. Tagalog responded that was correct. Councilmember Livengood further inquired if Armadillo Willy's was in Santa Clara County. Ms. Tagalog said she believed Armadillo Willy's corporate offices were in Los Gatos and that the food came from a Santa Clara County vendor.

Vice Mayor Dixon commended staff on a job well done, noted that Armadillo Willy's offered a variety, including vegetarian plates, and expressed appreciation to the Commissioners for defraying the cost of the Cartwheel Sculptures Art in lieu of receiving an individual gift/plaque.

Councilmember Polanski commended staff on a job well done in seeing that all Commissioners' input was received and said she felt this was something (the Cartwheel Sculptures) that would be looked to with pride by the Commissioners.

Mayor Esteves, referring to the food options, stated it was not the majority who voted for the BBQ buffet, however, it was the item with the highest number of votes.

MOTION to:

1. Select Armadillo Willy's due to the fact they are reasonably priced and are a well-known quality restaurant.
2. Contribute \$5,000 towards the purchase of the Cartwheel Sculptures Art, which will be displayed near City Hall, and \$1,000 towards a plaque to be displayed near the Cartwheel Sculptures acknowledging the gift from the Commissioners to the City for Commissioner's Recognition on Friday, July 23, 2004.

M/S: Livengood, Polanski.

Ayes: 5

NEW BUSINESS

3. Rental Facility Use Guideline Revisions and Fee Structure for City Hall

City Manager Thomas Wilson reported this item was asking the Council to consider two main topics - combining the City's rental policies into a single source book and the refinement of some of those policies and consideration of a rental structure and fee schedule for the new City Hall; and staff was suggesting that the Council first consider the new proposed rental fee structure for the City Hall, make comments and adjustments as appropriate, and bring it back to the Council at its next meeting in the form of a resolution adopting a fee structure the Council feels is appropriate; and after that item is concluded, consider the Rental Facility Use Guideline Revisions. Mr. Wilson commended and recognized a City employee staff group who worked on the rental fee structure for the City Hall, stating the participants were Gail Blalock, Jennifer Tagalog, Bonnie Greiner, and Kathy Margrave.

City Clerk Gail Blalock, addressing the proposed fee structure for City Hall, stated that the Committee had been struggling with the issue for almost a year, the proposal had gone through many revisions, the goal was to develop a use and fee structure that allowed the building to be shared with the Community, at the same time ensuring that beauty and integrity of City Hall was protected and maintained along with fiscal responsibility. Ms. Blalock stated there had been problems encountered at the old City Hall with some outside groups and it was desired not to have those same problems reoccur; hence, some of the proposed fees and requirements, at first, may seem a little high or unnecessary; and this was the first attempt at a policy for the new building. Ms. Blalock reviewed and highlighted some changes on the one page summary of general rental information for City Hall that the Council received in its packet stating that part of the Committee's goal was to propose a Policy that could easily be contained on one page; the first six paragraphs were consistent with the existing Facility Use Policy for the use of all other City facilities; the Policy included reference to Chapter 100, Title I of the Milpitas Municipal Code regarding the City Hall auditorium, which required use

of the Council Chamber be approved by the City Manager; no changes to the Ordinance were being recommended at this time; the Policy prohibited political fund-raising activities at City Hall, however, it would still be allowed at the Community Center. Ms. Blalock highlighted a change in the last sentence before the actual fee schedule regarding amplified or “live” music in outdoors areas to require a permit making this Policy consistent with the City’s ordinance governing amplified and live music in any of the City’s parks and would allow music in the outdoor plaza areas with a permit authorized by the City Manager. Ms. Blalock explained that the headings on the columns referred to the priority groupings and “Resident Non-Profits” referred to Priorities 2 and 3, which, in general, included Schools, Chamber of Commerce, local non-profits with 51% or more Milpitas membership and this was a change in that Priority 2 users would now be subject to a deposit and a rental fee for City Hall only; “Resident” heading was the same as Priority 4 users, and “Non-Resident” was the same as Priority 5 users. Ms. Blalock highlighted that the new Policy proposed that rental deposits be collected from all users, which would be fully refundable after the event provided everything was left in good order; the Committee Room rental rate did not include the use of the special electronic equipment in that room; if the equipment was to be used, the Committee proposed an additional \$50 per hour for a Public Information Specialist to operate the equipment, making the rental fee \$87.50 per hour; the Committee felt the reference to “no dinning tables or chairs” was confusing and was recommending it be removed; and the room set-up would be addressed with each application and would be subject to the Fire Marshall’s approval.

Ms. Blalock, referencing the Council Chambers, stated the Committee was proposing that the Chambers always require the presence of the equivalent of a Public Information Specialist at \$50 per hour due to the very expensive and highly technical equipment in the room; clarified that the first Amphitheatre Area listed in the Outdoor Areas was the Amphitheatre outside the Community Center; and explained the Plaza area near the flag poles would also include use of the grassy Amphitheatre area. Ms. Blalock apologized for not including in the Council’s packets the survey information referenced on the agenda and distributed copies, stating that the Committee tried to contact cities with newer city halls, but were unable to find a city hall comparable to Milpitas; the newer city halls were Hayward and Pittsburg; Pittsburg did not rent out its facilities; Hayward only rents out the Rotunda and pre-function areas; in most cases, the rentals were for non-profit groups and private functions were not allowed; and Fremont, which was not listed, recently remodeled its Council Chambers and no longer allow any outside group to use it.

Mayor Esteves said he felt Hayward’s rates were a little more reasonable for the Pre-function Area/Rotunda than what was being proposed for Milpitas. Ms. Blalock explained that the city of Hayward did not allow the use of its Council Chambers and Hayward also had a requirement that the use of the facility must provide cultural, social, recreation, regional, or educational benefit activities for Hayward residents or local businesses. Mayor Esteves said he would like to look further into the rate for resident non-profits (i.e., \$250 per hour) and felt Milpitas’ rates should be closer to those published by the city of Hayward; expressed concern that the charges would not be affordable to either residents or non-residents; suggested lowering the rates with the possibility of increasing them later if it was found that facilities were in high demand; wanted to encourage use of the Rotunda; and suggested rates be \$150 per hour for resident/non-profit and \$250 per hour for non-residents. Ms. Blalock commented that this was the Committee’s first round of coming up with a proposal and the Committee was looking the Council’s input and guidance.

Councilmember Polanski commented that the City Hall and Civic Center areas were wonderful places for the citizens to use and felt it was important to find a way to do it so it doesn’t impact the business of the City but still providing an opportunity to utilize the facilities; inquired if the Committee had given any thought to problems like the Committee Room already being double booked with the City’s own Commissions, and asked how they would be scheduled for the year. Ms. Blalock responded the regular scheduled meetings for the Committee Room would be blocked out on the schedule and another thing that would help make that room more available was to move some of the current City meetings being held in the Committee Room up to the new 4th floor conference room.

Councilmember Polanski said she agreed with the need for the Public Information Specialist; understood the Mayor's point regarding the Rotunda area being a wonderful place to hold an event; felt the hourly rate could be lowered for the resident/non-profit or charging it as an event rather than hourly; the first priority should be for Milpitas residents/non-profits; and inquired if there had been any discussion about one time events (i.e., the Candidate's Forum put on by the Chamber) where the Public Information Specialist would be the only charge. Ms. Blalock responded this policy would become part of the other facility use policy which contained a fee waiver process to the Council; Priority 1 had not been listed because any City sponsored/associated event would have no charge. City Manager Wilson added the fee waiver process would remain available as it was for all of the City's facilities, anything co-sponsored or associated was without fee, and the fee waiver program would be handled by the Council on an individual case-by-case basis. Councilmember Polanski said she felt the Rotunda area could be looked at with a different fee structure to encourage residents/non-profits to utilize it.

Councilmember Gomez inquired what costs the City incurred for use of the Rotunda or the Council Chambers. Ms. Blalock stated it depended on the size of the event, the number of building maintenance custodians needed; explained that the use of City Hall required someone with a key to monitor where people went within the building and to make sure the building was locked up afterwards and things were cleaned up; the use of technology equipment would be a greater expense as those staff would be on an overtime basis. Councilmember Gomez inquired if cost recovery, comparison, or a mixture of both were being looked at. Ms. Blalock stated that both were being looked at; cost recovery was being looked at so that essentially the City's wasn't paying for somebody to use the facilities; the Committee also looked at booking a meeting at a hotel where there are room charges and charges for every piece of equipment used and was trying to find a middle ground.

Mayor Esteves, referring to insurance, inquired if the City's insurance costs would increase if more people were allowed to use the facility, would the City require some type of insurance coverage from the user, and would the City provide security or would security be required from the user. Ms. Blalock said the insurance would work in the same manner as usage of other City facilities (i.e., the Community Center); the ordinance for the use of City Hall provided, as part of the approval, that the City Manager can require security as part of issuing the permit.

Recreation Services Manager Bonnie Greiner explained that there was a need to provide insurance if the event was open to the public or if alcohol was served; insurance requirements were addressed in the Rental Facilities packet on page 16, which would go hand-in-hand with this. City Manager Wilson, addressing the security, stated there had been occasions where the City had requested security be provided, was at a cost to the user, the City had to approve the type, which the Police Department usually defines. Ms. Greiner, referring to page 17, stated the cost also depended on the event's attendance estimates.

Vice Mayor Dixon said the Council had to have some set guidelines; there may be a resident wanting to take advantage of the staircase and possibly have a short wedding (2-3 hours) and she would like to encourage that type of usage (wedding) of the Rotunda; thought it would be helpful if staff would return with a list of routine uses (the City routinely gets from the Community Center); and inquired if the Rotunda could be used for fund-raising for non-profits. City Manager Wilson responded yes and that the qualification was "political" fund-raising, which was the only restriction on fund raising. Vice Mayor Dixon said it was her desire to see that there was at least cost recovery.

Ms. Greiner commented that currently if the Rotunda, City Hall, and Community Center auditorium were rented at the same time, there would not be enough tables and chairs for both facilities, which would incur additional costs.

City Manager Wilson inquired if the Council would be more comfortable with an event type structure for the Rotunda rather than an hourly. Vice Mayor Dixon said that since this had not

been done before, she would prefer to ease into it. City Manager Wilson proposed bringing back two revisions: An event approach and a revised hourly approach, and said he thought the City would benefit from having something in place and experience the results for approximately one year.

Councilmember Polanski said she envisioned the Rotunda area being used for a reception event rather than a sit-down area.

MOTION to direct staff to incorporate the Council's comments concerning the use of City Hall Facilities and return with a revised fee structure for use of the Rotunda area by residents and resident non-profit groups (reduced hourly rates and include event-based rates).

M/S: Dixon, Polanski.

Ayes: 5

Recreation Services Manager Bonnie Greiner reported that although the document before the Council was large, it was just a draft and staff was proposing just a few changes with the goal of condensing a variety of documents into one document that could be handed out to the public. Ms. Greiner reviewed the proposed changes modifying the language to provide further clarification and consistency, adding the City Hall building plaza and grounds, adding a \$15 processing fee for individuals purchasing additional insurance, and revising the rental cancellation policy and adding a \$50 cancellation fee should staff not be informed of the cancellation or the group not show up for a reservation. Ms. Greiner explained that the proposed fee and policy was consistent with surrounding City cancellation policies and charges. Ms. Greiner, addressing the revisions to the non-profit guidelines, stated the changes were included in an effort to reduce policy and rental abuse from non-profit groups and to reduce staffing costs to the City; a survey of surrounding cities revealed that the majority charge non-profit rates that recover staff costs and in addition, the revisions allow for potential rental revenue for private rentals; one change that staff was proposing was that non-profits, that currently have two free rentals per month, have one free rental per month at the Community Center, Senior Center/Modules, or Adobe; staff was also recommending eliminating the rental of the Community Center Auditorium and the Senior Center Auditorium for free use for non-profits; however, the groups still may apply to have the fee waived by the Council; staff was also recommending that a \$150 deposit be required that would be held on file for the entire year to reduce any necessary charges, damages, or no shows; new verbiage for the Basketball Court rules was contained within the packet; and referring to page 23, Soccer had been added to the August through December priority list; and staff was recommending that the proposed fees go into effect on March 1, 2004. Ms. Greiner further stated that staff would return to the Council for final approval.

Ms. Greiner explained that Recreation Facility and Fees document was included just for the Council's reference, the fees had already been approved and staff was not proposing any changes; and it was for comparison purposes of the Community Center/Auditorium/Sports Center fees to the new City Hall fees.

Mayor Esteves, referring to the cancellation, suggested that even with notice, a \$15 cancellation fee should be required; felt the \$150 deposit was redundant because if there is a cancellation without notice, a \$50 charge would be imposed and suggested that a \$50 deposit be implemented instead of \$150. Mayor Esteves clarified that he was suggesting a \$15 cancellation fee and reducing the deposit to \$50.

City Manager Wilson asked for clarification if the proposal for the \$150 addressed only Priority 1 and Priority 2 Groups. Ms. Greiner clarified that it addressed the non-profit groups.

Mayor Esteves asked if all non-profits would make a deposit of \$150 yearly. Ms. Greiner explained that the \$150 deposit would be kept on retainer all year if they choose to use the facility; if they don't come back the next year and they've had no damages and no cancellations, they would be refunded the \$150 after a year. Mayor Esteves said he thought there should be a \$15 cancellation fee.

Councilmember Polanski, addressing the cancellation fee, referenced trade shows where booth space was used and a cancellation charge was imposed based on the number of days prior to the actual show the cancellation was received and said she would like to see something along that line. Ms. Greiner directed the Council to page 9 of the document, stating that was currently in place to some degree.

Ms. Greiner said staff would clean up the document, look at the cancellation charges and possibly bring those down to a minimum of \$15 with a penalty fee for canceling.

Councilmember Gomez, addressing the late stages of cancellation (i.e., \$150 event), inquired what would actually be paid for by a resident non-profit for the Community Center. Ms. Tagalog directed the Council to item 3.8 D on page 9 where it stated for Priorities II and III, the group would be charged staff costs at the actual cost to the City for the amount of hours reserved. Ms. Tagalog stated the current hourly non-profit rate for the Community Center Auditorium was \$30/hour, based on a three-hour event reservation, \$90 would be subtracted from the \$150 deposit if the group canceled. Councilmember Gomez asked what would they be billed if they didn't show up and if the full amount would be collected. Ms. Greiner responded that currently they are not billed for the full amount. Ms. Tagalog added that it would depend on how long they had the facility reserved.

MOTION to direct staff to come back with the revisions to the cancellation policy and minor revisions to clean up the document for approval at a future Council meeting.

M/S: Polanski, Gomez.

Ayes: 5

ADJOURNMENT

There being no further Council business, Mayor Esteves adjourned the City Council meeting at 8:45 p.m. in memory of Michael Mihalakis, U.S. Soldier and Milpitas High School Graduate killed in Iraq.

Gail Blalock, CMC
City Clerk

The foregoing minutes were approved by the City Council as submitted on January 20, 2004.

Gail Blalock, City Clerk

Date